Table of Contents

Volume 12

CHAPTER 1. GATHERING INFORMATION AND INITIAL CLIENT ENGAGEMENT

A. ESTATE PLANNING GENERALLY
   § 1:1 Balance of knowledge
   § 1:2 Importance of an Engagement Letter
   § 1:3 Form: Engagement letter
   § 1:4 Form: Alternate Engagement Letter (Prior to Initial Conference.)
   § 1:5 Effectuate goals of client
   § 1:6 Keep in mind the importance of planning for disability, as well as death

B. DETERMINATION OF ASSETS
   § 1:7 Need for list of assets
   § 1:8 Personal and Asset inventory questionnaire
   § 1:9 Form: Asset Inventory Questionnaire
   § 1:10 Form: Alternate Questionnaire
   § 1:11 Benefit of using a comprehensive of questionnaire
   § 1:12 Information to be solicited either by questionnaire or in person

C. DETERMINING TESTAMENTARY INTENT
   § 1:13 Purpose
   § 1:14 The planner must elicit client’s wishes and concerns and not simply transcribe client directives
   § 1:15 Relationship between assets and beneficiaries
   § 1:16 Background and needs of beneficiaries
   § 1:17 Creditors
   § 1:18 Marital problems
   § 1:19 Maturity
   § 1:20 Wealth
   § 1:21 Provide options with analysis of advantages and pitfalls

D. CONSENT TO JOINT REPRESENTATION
   § 1:22 General rule
§ 1:23 Joint representation of spouse
§ 1:24 Attorney's judgment in accepting joint representation
§ 1:25 Obtain informed consent from both parties to undertake joint representation
§ 1:26 Form: Waiver of Conflict for Spousal Joint Representation
§ 1:27 No automatic conflict of interest arises by separately representing more than one family member

CHAPTER 2. ESTABLISHING FLORIDA DOMICILE

A. DEFINITION AND EFFECT OF DOMICILE

§ 2:1 Domicile defined
§ 2:2 Effect of domicile
§ 2:3 Probate
§ 2:4 Estate tax
§ 2:5 State determination of domicile

B. INDICATIONS AND REQUIREMENTS OF DOMICILE

§ 2:6 Ties to a state
§ 2:7 Actions for client to take in establishing domicile
§ 2:8 Checklist: Establishing and maintaining legal domicile (residence) in Florida
§ 2:9 Use of address
§ 2:10 Declaration of domicile
§ 2:11 Form: Declaration of domicile
§ 2:12 Homestead property
§ 2:13 Notify foreign state of Florida primary residence
§ 2:14 Use of safe deposit boxes and bank accounts
§ 2:15 Daily diary of time spent in state
§ 2:16 More weight given to certain ties
§ 2:17 Differently priced homes in two states
§ 2:18 Location of possessions
§ 2:19 Location of professional advisors
§ 2:20 Florida law on domicile status
§ 2:21 Amount of tax

C. SEVERANCE OF DOMICILIARY TIED TO ANOTHER STATE

§ 2:22 Principle of severance
§ 2:23 Time periods defined by statute in some states
CHAPTER 3. DURABLE POWER OF ATTORNEY

I. POWERS OF ATTORNEY—IN GENERAL

| § 3:1 | Florida Power of Attorney Act |
| § 3:2 | Applicability |
| § 3:3 | Interaction with other law |
| § 3:4 | Definition of power of attorney |
| § 3:5 | Definition of incapacity |
| § 3:6 | Durable vs. non-durable powers of attorney |
| § 3:7 | Default—Powers of attorney not durable |
| § 3:8 | Execution of the power of attorney |
| § 3:9 | Validity of powers of attorney not executed with formalities required by section 709.2105(2) |
| § 3:10 | Copies of power of attorney |
| § 3:11 | When effective |
| § 3:12 | Scope of power of attorney |
| § 3:13 | Notice on a financial institution |

II. TERMINATION, SUSPENSION AND REVOCATION OF POWER OF ATTORNEY

| § 3:14 | Termination of power of attorney |
| § 3:15 | Termination of agent’s authority under power of attorney |
| § 3:16 | Suspension of power of attorney |
| § 3:17 | Relief from suspension of power of attorney |
| § 3:18 | Agent without knowledge of termination or suspension of power of attorney |
| § 3:19 | Revocation of power of attorney |
| § 3:20 | Agent’s resignation |

III. THE AGENT

| § 3:21 | Definition of agent |
| § 3:22 | Qualifications of agent |
| § 3:23 | Agent is a fiduciary |
| § 3:24 | Co-agents |
| § 3:25 | Delegation among co-agents |
| § 3:26 | Successor agents |
| § 3:27 | Affiliates of an agent |
| § 3:28 | Qualified agents |
§ 3:29 Compensation and reimbursement of agent
§ 3:30 Acceptance of appointment
§ 3:31 Notice to agent
§ 3:32 Agent’s actions bind the principal

IV. DUTIES AND LIABILITIES OF THE AGENT
§ 3:33 Duties of agent
§ 3:34 Mandatory fiduciary duties
§ 3:35 Fiduciary duties which may be modified by the principal
§ 3:36 Duty to preserve the principal’s estate plan
§ 3:37 Duty to use special skills
§ 3:38 Duty to provide records
§ 3:39 Duties of agent with knowledge of breach
§ 3:40 Duties of agent with respect to predecessor
§ 3:41 Exoneration of agent
§ 3:42 Liability for breach of fiduciary duty

V. RELIANCE AND LIABILITY OF THIRD PERSONS
§ 3:43 Definition of third person
§ 3:44 Reliance upon power of attorney
§ 3:45 Good faith requirement
§ 3:46 Third persons not liable
§ 3:47 Affidavit of agent
§ 3:48 Form: Affidavit of agent
§ 3:49 Electronic journal of notary
§ 3:50 When the power of attorney is not in English
§ 3:51 When the principal is a financial institution
§ 3:52 Opinion of counsel
§ 3:53 Special Provisions when principal is missing per branch of United States Armed Forces
§ 3:54 Third person must accept or reject power of attorney within a reasonable time
§ 3:55 Refusal of power of attorney
§ 3:56 Requirement of different form of power of attorney prohibited
§ 3:57 Notice to third person

VI. JUDICIAL PROCEEDINGS
§ 3:58 Role of court
§ 3:59 Persons authorized to petition the court for relief
§ 3:60 Types of relief allowable
| § 3:61 | Attorney's fees and costs |
| § 3:62 | Proceedings involving conflicts of interest |

### VII. DRAFTING THE POWER OF ATTORNEY

- § 3:63 Specific grants of authority required
- § 3:64 Certain grants of authority requiring signed enumeration
- § 3:65 Gifts generally limited to annual exclusion
- § 3:66 Gifts to agent
- § 3:67 Grants of banking powers
- § 3:68 Grants of investment powers
- § 3:69 Florida Fiduciary Access to Digital Assets Act
- § 3:70 Prohibited grants of authority

### CHAPTER 4. HEALTH CARE ADVANCE DIRECTIVES

#### A. INTRODUCTION

- § 4:1 Goals of statute
- § 4:2 Division of statute

#### B. GENERAL PROVISIONS APPLICABLE TO ALL PARTS

- § 4:3 Division of first statutory section
- § 4:4 Legislative statement
- § 4:5 Terms undefined
- § 4:6 Limit of right
- § 4:7 Designation of person to make medical decisions
- § 4:8 Purpose of designation
- § 4:9 Subjective beliefs of third person unavoidable
- § 4:10 Living will intent
- § 4:11 Definitions
- § 4:12 Advance directive
- § 4:13 Definition of health care
- § 4:14 Health care decision
- § 4:15 Informed consent
- § 4:16 Life-prolonging procedure
- § 4:17 Food and water
- § 4:18 Medical procedures to diminish pain
- § 4:19 Surrogate and proxy
- § 4:20 Terminal condition
- § 4:21 End-stage condition
§ 4:22 Persistent vegetative state
§ 4:23 Integration with other law
§ 4:24 Effect on responsibilities of surrogate or proxy
§ 4:25 Relation to other statutes dealing with advance directives
§ 4:26 Impact upon health care providers
§ 4:27 When exemption does not apply
§ 4:28 Impact upon existing health care directives
§ 4:29 Out-of-state directives
§ 4:30 Impact of health care directives upon insurance
§ 4:31 Review of the surrogate’s or proxy’s decision
§ 4:32 Definitions of reviewing parties
§ 4:33 Procedure for review
§ 4:34 Conditions under which a review is allowed
§ 4:35 Conditions under which a review is not allowed
§ 4:36 Revocation of the advance directive
§ 4:37 Revocation by dissolution or annulment of marriage
§ 4:38 Timing of revocation

C. HEALTH CARE SURROGATE

§ 4:39 Definition of surrogate
§ 4:40 Designation of surrogate for mental health treatment
§ 4:41 Timing of Authority of Surrogate
§ 4:42 Designation of health care surrogate
§ 4:43 Third-party signature
§ 4:44 Presumption
§ 4:45 Copy to surrogate
§ 4:46 Alternate surrogate
§ 4:47 Suggested form of designation
§ 4:48 Designation of health care surrogate for minor
§ 4:49 Designation of health care surrogate for mental health treatment for minor
§ 4:50 When a health care surrogate for minor can be created
§ 4:51 Term of health care surrogate for minor
§ 4:52 Presumption regarding minor’s surrogate
§ 4:53 Suggested form of designation for health care surrogate for minor
§ 4:54 Revocation of designation of health care surrogate
§ 4:55 Revocation by dissolution or annulment of marriage
§ 4:56 Timing of revocation
§ 4:57 Tenure of surrogate
§ 4:58 Inability of surrogate to perform
§ 4:59 Duties and responsibilities of health care surrogate generally
### Table of Contents

$§ 4:60$ Consultation and informed decisions  
$§ 4:61$ Best interest standard  
$§ 4:62$ Consent of surrogate  
$§ 4:63$ Access to records  
$§ 4:64$ Application for public benefits.  
$§ 4:65$ Authority to deal with health care facilities  
$§ 4:66$ Authority to compel health care provider  
$§ 4:67$ Local domestic partnership registries  
$§ 4:68$ Relation to life-prolonging procedures  
$§ 4:69$ Certain medical procedures may not be carried out  
$§ 4:70$ Notification to principal’s family  
$§ 4:71$ Effect of appointment of guardian  
$§ 4:72$ Integration with guardian statute  
$§ 4:73$ Release of information to guardian  
$§ 4:74$ Physicians’ findings of incapacity  
$§ 4:75$ Incapacity not inferred from mental illness  
$§ 4:76$ Incapacity as to health care decisions only  
$§ 4:77$ Notification to surrogate with authority upon incapacity  
$§ 4:78$ Notification to Surrogate with immediate authority  
$§ 4:79$ Notification to primary care physician  
$§ 4:80$ Duration of surrogate’s authority  
$§ 4:81$ Redetermination of incapacity  

#### D. Living Wills

$§ 4:82$ Overview  
$§ 4:83$ Definitions  
$§ 4:84$ Procedures for making a living will  
$§ 4:85$ Signed and witnessed  
$§ 4:86$ Suggested form of living will  
$§ 4:87$ Designation of surrogate in living will  
$§ 4:88$ Notice to physician  
$§ 4:89$ Revocation of living will  
$§ 4:90$ Implementation of living will  
$§ 4:91$ Surrogate not designated  
$§ 4:92$ Dispute over physician’s decision  
$§ 4:93$ Time of review  
$§ 4:94$ Conditions to satisfy before implementing living will  
$§ 4:95$ Living will as proof of intent  
$§ 4:96$ Procedure in the absence of a living will  
$§ 4:97$ Transfer of patient on refusal to comply with living will  
$§ 4:98$ Ethical beliefs of health care provider  
$§ 4:99$ Decision within seven days
§ 4:100 Transfer
§ 4:101 Implement wishes of patient or surrogate
§ 4:102 Withdrawal of life support when patient in a persistent vegetative state with no advance directive or proxy
§ 4:103 Withdrawal of life support by surrogate when there is no living will
§ 4:104 Forgery or other fraudulent activity concerning living will
§ 4:105 Third-degree felony
§ 4:106 Second-degree felony
§ 4:107 Determination of patient’s medical condition
§ 4:108 Mercy killing, euthanasia, and suicide distinguished

E. IMPLEMENTING THE HEALTH CARE PROXY
§ 4:109 Absence of advance directive or surrogate
§ 4:110 Order in determining proxy
§ 4:111 Limits on actions of proxy
§ 4:112 Proxy has no statutory right to financial information
§ 4:113 Standard under which proxy must act
§ 4:114 Integration with rest of chapter
§ 4:115 Clear and convincing evidence
§ 4:116 Consent to treatment for minors

F. ANATOMICAL GIFTS AND CREMATION
§ 4:117 Overview
§ 4:118 Intent
§ 4:119 Gift by decedent
§ 4:120 Gift by family member
§ 4:121 Objections to gift
§ 4:122 Donees’ rights
§ 4:123 Who are donees
§ 4:124 Expenses of preservation
§ 4:125 Gifts made by other means
§ 4:126 Revocation of gift
§ 4:127 Hospitals’ duty
§ 4:128 Gifts made by will
§ 4:129 Gifts made by other means
§ 4:130 Disposition of remains by decedent
§ 4:131 Cremated remains not property

G. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)
§ 4:132 HIPAA introduction
TABLE OF CONTENTS

§ 4:133  Who is covered by the privacy rule?
§ 4:134  What information is protected?
§ 4:135  General principles for disclosure
§ 4:136  General rule for authorization
§ 4:137  Over arching concern
§ 4:138  Personal representatives
§ 4:139  Personal representatives and minors
§ 4:140  Pre-emption
§ 4:141  Enforcement penalties
§ 4:142  Effective dates
§ 4:143  Form of health care surrogate authorizing surrogate under HIPAA
§ 4:144  Language for trust waiving HIPAA
§ 4:145  Additional information concerning authorizations
§ 4:146  Further information concerning personal representatives

H. FORMS

Form 4:147  Designation of Health Care Surrogate
Form 4:148  Designation of health care surrogate for minor
Form 4:149  Living will

CHAPTER 5. MULTI–STATE CONSIDERATIONS

A. OVERVIEW OF COMMUNITY PROPERTY

§ 5:1  Based on marriage
§ 5:2  Ownership of property during marriage
§ 5:3  Compared with common law
§ 5:4  Effect of death of one spouse
§ 5:5  Restraint on conveyance of property

B. FLORIDA UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

§ 5:6  Property to which the act applies
§ 5:7  Married persons
§ 5:8  Personal property
§ 5:9  Real property
§ 5:10  Real property which act does not cover
§ 5:11  Rebuttable presumptions
§ 5:12  Property acquired in community property jurisdiction
§ 5:13 Property acquired in non-community property jurisdiction
§ 5:14 Manner of disposition on death
§ 5:15 Half to surviving spouse
§ 5:16 Half to estate of deceased spouse
§ 5:17 Limit on power to dispose property by will
§ 5:18 Perfection of title
§ 5:19 Property held by surviving spouse
§ 5:20 Property held by deceased spouse at time of death
§ 5:21 No initial duty on personal representative
§ 5:22 Rights of third persons
§ 5:23 Creditor's rights
§ 5:24 Purchaser for value or lender
§ 5:25 Protection of purchaser for value or lender
§ 5:26 Transferred property
§ 5:27 Opt-out provision
§ 5:28 Severing and altering
§ 5:29 Reinvestment in homestead property
§ 5:30 Definition of homestead
§ 5:31 Uniformity of judicial interpretation and construction

C. DISPOSITION OF FLORIDA PROPERTY OWNED BY NONRESIDENT DECEDEENTS
§ 5:32 Ancillary administration of nonresident’s estate
§ 5:33 Initial probate in foreign state
§ 5:34 Direction that Florida law controls
§ 5:35 Effect of foreign will in Florida

D. DETERMINING WHICH STATE'S LAWS APPLY
§ 5:36 Location of intangible assets for purpose of probate
§ 5:37 Jurisdiction of will contests
§ 5:38 Contracts
§ 5:39 Disposition of Real property

CHAPTER 6. THE FLORIDA TRUST CODE
A. GENERAL PROVISIONS AND DEFINITIONS
§ 6:1 Title and scope
§ 6:2 Effective date
§ 6:3 Definitions
§ 6:4 —Beneficiary verses qualified beneficiary
§ 6:5 —Others treated as qualified beneficiaries
§ 6:6 —Interests of the beneficiaries
### Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 6:7</td>
<td>Definitions of other important terms not previously defined</td>
</tr>
<tr>
<td>§ 6:8</td>
<td>Default and mandatory rules</td>
</tr>
<tr>
<td>§ 6:9</td>
<td>Governing law</td>
</tr>
<tr>
<td>§ 6:10</td>
<td>Principal place of administration</td>
</tr>
<tr>
<td>§ 6:11</td>
<td>Notice</td>
</tr>
<tr>
<td>§ 6:12</td>
<td>Notice posted to electronic account or website</td>
</tr>
<tr>
<td>§ 6:13</td>
<td>Nonjudicial settlement agreements</td>
</tr>
<tr>
<td><strong>B. JUDICIAL PROCEEDINGS</strong></td>
<td></td>
</tr>
<tr>
<td>§ 6:14</td>
<td>Subject matter jurisdiction</td>
</tr>
<tr>
<td>§ 6:15</td>
<td>Role of court</td>
</tr>
<tr>
<td>§ 6:16</td>
<td>Special proceedings to review compensation and employment of trustees, agents and employees of the trust</td>
</tr>
<tr>
<td>§ 6:17</td>
<td>—Payment of attorney fees and costs in special proceedings to determine compensation issues</td>
</tr>
<tr>
<td>§ 6:18</td>
<td>Jurisdiction over trustee and beneficiary</td>
</tr>
<tr>
<td>§ 6:19</td>
<td>Service of process</td>
</tr>
<tr>
<td>§ 6:20</td>
<td>Venue</td>
</tr>
<tr>
<td>§ 6:21</td>
<td>Burden of proof in trust contest</td>
</tr>
<tr>
<td>§ 6:22</td>
<td>Burden of proof—Presumption of undue influence</td>
</tr>
<tr>
<td>§ 6:23</td>
<td>Timing of trust contest</td>
</tr>
<tr>
<td>§ 6:24</td>
<td>Guardian’s right to trust contest</td>
</tr>
<tr>
<td>§ 6:25</td>
<td>Timing of trust contest</td>
</tr>
<tr>
<td><strong>C. REPRESENTATION</strong></td>
<td></td>
</tr>
<tr>
<td>§ 6:26</td>
<td>Effect of representation</td>
</tr>
<tr>
<td>§ 6:27</td>
<td>Overview of types of representatives</td>
</tr>
<tr>
<td>§ 6:28</td>
<td>Holder of power of appointment as representative</td>
</tr>
<tr>
<td>§ 6:29</td>
<td>Takers in default represent permissible appointees</td>
</tr>
<tr>
<td>§ 6:30</td>
<td>Fiduciary representation</td>
</tr>
<tr>
<td>§ 6:31</td>
<td>Virtual representation</td>
</tr>
<tr>
<td>§ 6:32</td>
<td>Court appointed representative</td>
</tr>
<tr>
<td>§ 6:33</td>
<td>Proper consideration of family interests by representative</td>
</tr>
<tr>
<td>§ 6:34</td>
<td>Settlor designated representative</td>
</tr>
<tr>
<td><strong>D. CREATION, VALIDITY, MODIFICATION AND TERMINATION</strong></td>
<td></td>
</tr>
<tr>
<td>§ 6:35</td>
<td>Trust purpose</td>
</tr>
<tr>
<td>§ 6:36</td>
<td>Creation of trust</td>
</tr>
<tr>
<td>§ 6:37</td>
<td>Formalities required</td>
</tr>
</tbody>
</table>
§ 6:38 Form: Affidavit of Proof of Revocable Trust
§ 6:39 Creation or amendment trust by guardian
§ 6:40 Effect of fraud, duress, mistake, or undue influence
§ 6:41 Limitations period applicable to challenge a trust based on fraud or undue influence
§ 6:42 Void gifts
§ 6:43 Permissible beneficiaries
§ 6:44 Modification permitted by statute
§ 6:45 Judicial modification
§ 6:46 —Judicial modification consistent with settlor's purpose
§ 6:47 —Best interests standard for certain trusts
§ 6:48 Nonjudicial modification for certain trusts
§ 6:49 Cy pres
§ 6:50 Uneconomic trusts
§ 6:51 Reformation to correct mistakes
§ 6:52 Modification to achieve tax objectives
§ 6:53 Combination and division of trusts

E. DECANTING

§ 6:54 Decanting generally
§ 6:55 Absolute power
§ 6:56 Authorized trustee
§ 6:57 Vested interest
§ 6:58 First trust/second trust nomenclature
§ 6:59 Substantially similar
§ 6:60 The power to invade principal of trust and create new trusts when trustee has absolute power
§ 6:61 The power to invade principal of trust and create new trusts when trustee does not have absolute power
§ 6:62 The power to invade principal of trust and transfer to a supplemental needs trust
§ 6:63 The power to invade as a power of appointment
§ 6:64 Notice
§ 6:65 Savings clauses
§ 6:66 Prohibition of certain benefits to trustee

F. CREDITORS CLAIMS, SPENDTHRIFT AND DISCRETIONARY TRUSTS

§ 6:67 Mandatory nature of provisions
§ 6:68 Spendthrift and creditor rights
§ 6:69 Exception creditors
§ 6:70 Creditors may not compel or attach distributions from discretionary trusts
§ 6:71 Even where trustee abdicates responsibilities to manage and distribute trust property to beneficiary, creditors may not compel or attach distributions
§ 6:72 Creditor may not compel or attach discretionary distributions where beneficiary is trustee of the trustee is bound by an ascertainable standard
§ 6:73 Creditors may attach mandatory distributions
§ 6:74 Creditors rights against settlor
§ 6:75 Right of withdrawal—When holder of power is treated as settlor and subject to claims of creditors
§ 6:76 When settlor of inter vivos QTIP trust not the settlor for purposes of claims of creditors
§ 6:77 Trustee’s duty to pay expenses and obligations of settlor’s estate
§ 6:78 —Certain death benefits excluded
§ 6:79 Notice of trust
§ 6:80 Personal obligations of trustee

G. REVOCABLE TRUSTS
§ 6:81 Standard of capacity
§ 6:82 Revocation and amendment
§ 6:83 Statutory procedure for revocation or amendment
§ 6:84 Revocation or amendment of trust in accordance with trust terms
§ 6:85 Revocation of trust with multiple settlors
§ 6:86 Revocation and modification of revocable trust by agent under power of attorney
§ 6:87 Powers of withdrawal
§ 6:88 Duties to settlor
§ 6:89 Time limitation on contesting the validity of trust

H. OFFICE OF TRUSTEE
§ 6:90 Accepting and declining trusteeship
§ 6:91 Bond
§ 6:92 Co-trustee
§ 6:93 Directed and excluded trustees
§ 6:94 Vacancy
§ 6:95 Resignation
§ 6:96 Removal
§ 6:97 Delivery of property by former trustee
§ 6:98 Compensation of trustee when no trustee fee is set forth in the trust document
§ 6:99 Compensation of trustee when trustee fee is set forth in the trust document
§ 6:100  Trustee’s advancement of expenses
§ 6:101  Trustee entitled to fees for other services to trust

I. DUTIES AND POWERS OF TRUSTEE

§ 6:102  Duties of trustee
§ 6:103  Duty of loyalty—Voidable transactions
§ 6:104  —Presumptively voidable transactions
§ 6:105  Exceptions to conflict between personal and fiduciary interests when trustee is a bank, trust company, or other regulated entity
§ 6:106  General exceptions to conflict between personal and fiduciary interests
§ 6:107  Duty of loyalty with respect to the payment of attorney’s fees when trustee is sued for breach of fiduciary duty
§ 6:108  Delegation of duties
§ 6:109  Power to direct trustee by persons not co-trustee
§ 6:110  Power of co-trustee to direct excluded trustee
§ 6:111  Protection of successor trustee
§ 6:112  Duty to notify beneficiary of trust and trusteeship
§ 6:113  Duty to inform
§ 6:114  Duty to account
§ 6:115  Waivers of accounting
§ 6:116  Discretionary powers in general
§ 6:117  Discretionary powers when trustee is beneficiary
§ 6:118  Special duties for charitable trustees
§ 6:119  Specific powers
§ 6:120  Release of property
§ 6:121  Administration pending outcome of proceedings
§ 6:122  Unclaimed property in trust

J. PRUDENT INVESTOR RULE

§ 6:123  Prudent Investor Rule—Generally
§ 6:124  Review assets as part of a whole, not in isolation
§ 6:125  Special skills
§ 6:126  Trustee must review trust assets
§ 6:127  Diversification
§ 6:128  Balance production of income with security of principal
§ 6:129  Duties may be altered by a settlor

K. SPECIAL PROVISIONS IN TRUST CODE FOR LIFE INSURANCE TRUSTS

§ 6:130  Negation of duties of trustee of life insurance trust
TABLE OF CONTENTS

§ 6:131 Qualified person
§ 6:132 When duties relieved
§ 6:133 Compensation of trustee
§ 6:134 Insurance sold by affiliate of trustee
§ 6:135 Trustee may delegate certain responsibilities

L. LIABILITY OF TRUSTEE AND THIRD PARTIES

§ 6:136 Remedies for breach
§ 6:137 Damages for breach
§ 6:138 Limitations on proceedings against trustee
§ 6:139 —Trust disclosure documents
§ 6:140 —Limitations notice
§ 6:141 Statute of repose
§ 6:142 Reliance on trust instrument or knowledge of event
§ 6:143 Exculpation of trustee
§ 6:144 Beneficiaries’ consent
§ 6:145 Personal liability of trustee
§ 6:146 Third parties
§ 6:147 Improper distribution

M. ATTORNEY FEES

§ 6:148 Attorney fees for services to trust
§ 6:149 Trustee’s attorney fees in general
§ 6:150 Ordinary services of attorney
§ 6:151 Extraordinary services of attorney
§ 6:152 Compensation for preparation of estate tax return
§ 6:153 Power to adjust compensation
§ 6:154 Fiduciary lawyer-client privilege

N. RULES OF CONSTRUCTION

§ 6:155 In general
§ 6:156 Persons presumed to have predeceased
§ 6:157 Antilapse
§ 6:158 Change in securities
§ 6:159 Contest clause
§ 6:160 Trust construction to determine beneficiaries

O. SPECIAL LAWS DEALING WITH 2010 ESTATE TAX REPEAL

§ 6:161 Enactment of estate tax repeal fix
§ 6:162 Right to judicial construction
§ 6:163 Intent may contradict plain meaning of trust instrument
§ 6:164 Powers of trustee  
§ 6:165 When special rules of construction do not apply  
§ 6:166 Effective date

CHAPTER 7. USE OF REVOCABLE LIVING TRUSTS AND OTHER NONPROBATE MEANS OF TRANSFERRING PROPERTY AT DEATH

A. CONFIDENTIALITY
   § 7:1 Wills must become public record, accessible to all  
   § 7:2 Probate documents may reveal private asset and beneficiary information  
   § 7:3 Trusts not “deposited” with clerk  
   § 7:4 Required filings provide little information about the contents of a revocable living trust  
   § 7:5 When contents of trusts must be shown  
   § 7:6 Assets passing to beneficiaries need not be disclosed on inventory

B. AVOIDANCE OF PROBATE
   § 7:7 Most popular reason to use a trust is to avoid probate  
   § 7:8 Increased costs of probate  
   § 7:9 Successor trustee may begin administration immediately  
   § 7:10 Revocable, living trust must be funded in order to avoid probate  
   § 7:11 Form: Funding letter  
   § 7:12 Less Court oversight of trusts  
   § 7:13 More choices in trustee

C. TRUSTS MAY AVOID PROBLEMS WITH GUARDIANSHIP
   § 7:14 Mechanism to avoid guardianship upon incapacity  
   § 7:15 More certainty with respect to fiduciaries during incapacity  
   § 7:16 Avoids humiliation of having personal rights removed  
   § 7:17 Other comparisons to guardianship process

D. OTHER CONSIDERATIONS
   § 7:18 No adverse affect on the settlor  
   § 7:19 Importance of identifying trust details in deed  
   § 7:20 When trusts are liable for payment of estate expenses
E. METHODS OF TRANSFERRING ASSETS AT DEATH OTHER THAN USING A WILL OR TRUST

§ 7:21 Operation of law
§ 7:22 Joint accounts—Presumption of survivorship
§ 7:23 Joint account survivorship presumption can be overcome
§ 7:24 Joint accounts owned by spouses presumed tenancy by the entirety
§ 7:25 Pay-on-death/Transfer-on-death
§ 7:26 Effect on owner
§ 7:27 Beneficiary may be a corporation
§ 7:28 Transfer not testamentary
§ 7:29 Other common beneficiary designations
§ 7:30 Not subject to claims of creditors
§ 7:31 Will substitutes may be invalidated due to undue influence, fraud, duress, and overreaching
§ 7:32 Escheat

F. DEATH BENEFITS

§ 7:33 Insurance
§ 7:34 Effect of payment to trustee
§ 7:35 Preventing inadvertent waiver

G. EFFECT OF DIVORCE OR INVALIDITY OF MARRIAGE ON THE DISPOSITION OF NON-PROBATE AND NON-TRUST ASSETS AT DEATH

§ 7:36 When designation of spouse as beneficiary is void
§ 7:37 When designation of spouse as beneficiary is not void
§ 7:38 Liability of party releasing retirement funds to spouse when there is no designation that beneficiary is spouse
§ 7:39 Liability of party releasing retirement funds to spouse when the beneficiary is listed as the decedent’s spouse
§ 7:40 Form: Affidavit of surviving spouse
§ 7:41 Liability of party releasing retirement funds to secondary beneficiary when the primary beneficiary is listed as the decedent’s spouse
§ 7:42 Form: Affidavit of secondary beneficiary
§ 7:43 No liability where assets are transferred pursuant to certain designations
CHAPTER 8. EXECUTION OF WILLS AND INCORPORATION BY REFERENCE PROPERTY

A. WILLS EXECUTION AND ATTESTATION

§ 8:1 Decline in use of wills
§ 8:2 Requirements for execution
§ 8:3 Signature of testator
§ 8:4 Witnesses to will
§ 8:5 Number of witnesses
§ 8:6 Presence of witnesses required
§ 8:7 Definition of “presence”
§ 8:8 Definition of vulnerable adult
§ 8:9 Who may act as witness
§ 8:10 Interested person as witness
§ 8:11 Age requirement
§ 8:12 No specific words necessary
§ 8:13 Self-proof of will
§ 8:14 Revocation of Will
§ 8:15 Form: Self-proof of will
§ 8:16 Military testamentary instruments

B. CODICILS

§ 8:17 Execution of a codicil
§ 8:18 Codicil refers to previous will
§ 8:19 Revocation of codicil
§ 8:20 Effect of revocation of will

C. INCORPORATION BY REFERENCE

§ 8:21 Definition
§ 8:22 Requirements to incorporate a writing by reference
§ 8:23 Oral instructions cannot be incorporated
§ 8:24 Requirements for separate writing identifying devises of tangible personal property
§ 8:25 Proving what writing has been incorporated
§ 8:26 Evidence admissible to identify writing
§ 8:27 Ambiguous reference to writing

D. POUR-OVER WILLS

§ 8:28 Definition
§ 8:29 Devises to trustee
§ 8:30 Use of a pour-over will
TABLE OF CONTENTS

§ 8:31 Avoidance of probate
§ 8:32 Assets which could not be transferred to living trust
§ 8:33 Examples of assets not in trust at time of testator’s death

E. BENEFITS OF USING A WILL

§ 8:34 Centralizes distributions
§ 8:35 Centralizes responsibility
§ 8:36 Testator’s plan

F. NEGATIVES OF RELYING ON A WILL TO PASS ASSETS TO HEIRS

§ 8:37 Privacy
§ 8:38 Limited choice of personal representative
§ 8:39 Assets which pass via operation of law pass immediately
§ 8:40 Decedent’s creditor’s claims
§ 8:41 Finding the will

CHAPTER 9. GENERAL DRAFTING PRINCIPLES

A. PRECATORY LANGUAGE

§ 9:1 Definition and use of precatory language
§ 9:2 Provide explanations
§ 9:3 Give investment advice
§ 9:4 Not legally binding
§ 9:5 Making precatory language legally binding
§ 9:6 Drafting considerations

B. SIMPLICITY AND CLARITY

§ 9:7 Benefits to testator
§ 9:8 Avoid legalese
§ 9:9 Personalize the document
§ 9:10 Consistency
§ 9:11 Statutory definitions
§ 9:12 Beneficiary
§ 9:13 Devise
§ 9:14 Devisee
§ 9:15 Estate
§ 9:16 Grantor
§ 9:17 Personal representative
C. CONTINGENCIES

§ 9:24 Purpose
§ 9:25 Survival
§ 9:26 Relationships
§ 9:27 Size and nature of assets
§ 9:28 Nature of assets
§ 9:29 Size of estate
§ 9:30 Consideration to primary beneficiary
§ 9:31 Charitable beneficiaries
§ 9:32 Personal representatives and trustees
§ 9:33 Disclaimer planning

D. FORMS

Form 9:34 Sample will

CHAPTER 10. DRAFTING INTRODUCTORY PROVISIONS OF TESTAMENTARY INSTRUMENTS

A. INTRODUCTORY PROVISIONS FOR WILLS

§ 10:1 Purpose
§ 10:2 Name of testator
§ 10:3 Domicile
§ 10:4 Declaration of document as will
§ 10:5 Anatomical gifts
§ 10:6 Funeral
§ 10:7 Instructions may not be binding
§ 10:8 Cremation
§ 10:9 Expenses of last illness and funeral
§ 10:10 Expenses usually obligation of estate
§ 10:11 Payment of debts and expenses
§ 10:12 Drafting precaution
§ 10:13 Encumbrances on estate assets
§ 10:14 Living trusts liable for debts
§ 10:15 Instruction for debt or expense payments
B. INTRODUCTORY PROVISIONS FOR LIVING TRUSTS

§ 10:17 Purpose
§ 10:18 Identification of document and parties
§ 10:19 Amendment procedure
§ 10:20 Rights reserved to settlor
§ 10:21 Power to amend and revoke
§ 10:22 Specific amendment procedures
§ 10:23 Trustee's consent to amendment
§ 10:24 Requiring consent not advisable
§ 10:25 Power to use trust property
§ 10:26 Power to designate trustees
§ 10:27 Payment of debts and expenses
§ 10:28 Drafting precaution
§ 10:29 Incorporation by reference
§ 10:30 Incapacity of settlor
§ 10:31 Transition of trustees
§ 10:32 Determining incapacity
§ 10:33 Conflicts between settlor and successor trustee
§ 10:34 Discuss with settlor
§ 10:35 Situs and applicable law
§ 10:36 Selecting a Florida situs
§ 10:37 Transfer of foreign situs trusts to Florida
§ 10:38 Place of administration
§ 10:39 Changes from Florida situs

C. REVOCATION OF WILLS AND TRUSTS

§ 10:40 Generally
§ 10:41 Inconsistent will, codicil, or trust
§ 10:42 Destroying the testamentary document
§ 10:43 Pretermitted child and spouse
§ 10:44 Effect of revoking codicil or amendment on will or trust
§ 10:45 Effect of revoking will or trust on a codicil or amendment
§ 10:46 Republishing a will or trust
§ 10:47 Multiple wills

CHAPTER 11. DEVISE OF SPECIFIC ASSETS

A. REAL ESTATE

§ 11:1 Ability to devise
§ 11:2 Homestead
§ 11:3 Jointly owned property
§ 11:4 Description
§ 11:5 Encumbrances
§ 11:6 No encumbrance statute governs trusts
§ 11:7 Life estates
§ 11:8 Potential problems
§ 11:9 Use of trust rather than life estate

B. TANGIBLE PERSONAL PROPERTY

§ 11:10 Need for specific gift
§ 11:11 Exempt property
§ 11:12 Description
§ 11:13 Form of description
§ 11:14 Business property
§ 11:15 Disputes
§ 11:16 Avoid through drafting
§ 11:17 Allowing personal representative to resolve dispute
§ 11:18 Insurance
§ 11:19 Division of tangible personal property
§ 11:20 Initial considerations
§ 11:21 Second marriage
§ 11:22 Equal monetary division
§ 11:23 Division methods
§ 11:24 Separate writing
§ 11:25 Reference in will required
§ 11:26 General disposition of tangible personal property in will
§ 11:27 Convenient and less expensive
§ 11:28 Privacy of list
§ 11:29 Lost lists and multiple lists
§ 11:30 No statute governing separate writings for trusts
§ 11:31 Agreement of beneficiaries
§ 11:32 Division by personal representative
§ 11:33 Alternating selection by beneficiaries
§ 11:34 Sale of property
§ 11:35 Trusts
§ 11:36 Life estate
§ 11:37 Minors
§ 11:38 Value of property
§ 11:39 Provisions to avoid guardianship
§ 11:40 Trust to avoid guardianship
§ 11:41 Use of statutory custodian
§ 11:42 Sale or use of property by minor
§ 11:43 Delivery
§ 11:44 May exceed value of property
§ 11:45 Provisions in will

C. BUSINESS INTERESTS

§ 11:46 Digital Assets
§ 11:47 Lifetime planning
§ 11:48 Prearrange sale of business
§ 11:49 Testator is best judge of business’s value
§ 11:50 Easier to find buyers without forced sale
§ 11:51 Sale of business by personal representative
§ 11:52 Testamentary gift of business interest
§ 11:53 Gift to active beneficiaries
§ 11:54 Continuation of business under active participant
§ 11:55 Make sure beneficiary wants business
§ 11:56 Testator’s desire to treat children equally
§ 11:57 Resentment of active participant
§ 11:58 Lack of control by active participant
§ 11:59 Resentment of other beneficiaries
§ 11:60 Equalization methods
§ 11:61 Active participant buys the business
§ 11:62 Right of forced sale to active participant
§ 11:63 Continuing option of active participant to buy other interests
§ 11:64 Operation instructions
§ 11:65 Control
§ 11:66 Drafting pitfalls
§ 11:67 Determine form of ownership of business
§ 11:68 Statutory restrictions on personal representative
§ 11:69 Restrictions on trustee
§ 11:70 Powers of personal representatives and trustees
§ 11:71 Continued operation
§ 11:72 Delegation
§ 11:73 Sale
§ 11:74 Change in form
§ 11:75 Invest additional capital
§ 11:76 Borrow money
§ 11:77 Employment of personal representative or trustee
§ 11:78 Management
§ 11:79 Change in operations
§ 11:80 Capital structure
§ 11:81 Liquidation
§ 11:82 Accumulate reserves
§ 11:83 Compensation
§ 11:84 Sub–S stock
§ 11:85 Number of shareholders
§ 11:86 Citizenship
§ 11:87 Testamentary trusts
§ 11:88 Estates and living trusts
§ 11:89 Electing small business trust
§ 11:90 Qualified subchapter S trusts

D. FORGIVENESS OF DEBT

§ 11:91 May be part of estate
§ 11:92 Must include forgiveness provision

E. COUNTRY CLUB MEMBERSHIPS

§ 11:93 Need for specific gift
§ 11:94 Devise of residence associated with membership

F. TYPES OF GIFTS

§ 11:95 Significance of types of gifts
§ 11:96 Pecuniary gifts
§ 11:97 Amount determined by formula
§ 11:98 Specific gifts
§ 11:99 Demonstrative gift
§ 11:100 General gift
§ 11:101 Residuary gift
§ 11:102 Residue to pour-over will from living trust

CHAPTER 12. GIFTS IN TRUST

A. REASONS FOR USE

§ 12:1 Generally
§ 12:2 Avoiding guardianship
§ 12:3 Age of receipt
§ 12:4 Designation of trustees
§ 12:5 Powers of trustees
§ 12:6 Disposition at death
§ 12:7 Privacy
§ 12:8 Expense
§ 12:9 Custodianship
§ 12:10 Experience handling money
§ 12:11 Controlling future disposition
§ 12:12 Preservation of wealth
§ 12:13 Creditors
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 12:14</td>
<td>Inability to handle money</td>
</tr>
<tr>
<td>§ 12:15</td>
<td>Judgments</td>
</tr>
<tr>
<td>§ 12:16</td>
<td>Divorce</td>
</tr>
<tr>
<td>§ 12:17</td>
<td>Substance abuse</td>
</tr>
<tr>
<td>§ 12:18</td>
<td>Potential creditors</td>
</tr>
</tbody>
</table>

**B. USE OF SINGLE OR MULTIPLE TRUSTS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 12:19</td>
<td>Advantages of multiple trusts</td>
</tr>
<tr>
<td>§ 12:20</td>
<td>Investments</td>
</tr>
<tr>
<td>§ 12:21</td>
<td>Distributions</td>
</tr>
<tr>
<td>§ 12:22</td>
<td>Additional costs of multiple trusts</td>
</tr>
<tr>
<td>§ 12:23</td>
<td>Advantages of single trust</td>
</tr>
<tr>
<td>§ 12:24</td>
<td>Sprinkle trusts</td>
</tr>
<tr>
<td>§ 12:25</td>
<td>Term of trust</td>
</tr>
<tr>
<td>§ 12:26</td>
<td>Standard for distribution</td>
</tr>
<tr>
<td>§ 12:27</td>
<td>Discretion of trustee</td>
</tr>
<tr>
<td>§ 12:28</td>
<td>Specify priority among beneficiaries</td>
</tr>
<tr>
<td>§ 12:29</td>
<td>Disadvantages of trustee as beneficiary</td>
</tr>
</tbody>
</table>

**C. DISTRIBUTION OF INCOME**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 12:30</td>
<td>Methods of distribution</td>
</tr>
<tr>
<td>§ 12:31</td>
<td>Mandatory distribution</td>
</tr>
<tr>
<td>§ 12:32</td>
<td>Discretionary distribution</td>
</tr>
<tr>
<td>§ 12:33</td>
<td>Inability to handle income</td>
</tr>
<tr>
<td>§ 12:34</td>
<td>Excess of income</td>
</tr>
<tr>
<td>§ 12:35</td>
<td>Set standard for distribution</td>
</tr>
<tr>
<td>§ 12:36</td>
<td>Accumulation</td>
</tr>
</tbody>
</table>

**D. DISTRIBUTION OF TRUST PRINCIPAL**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 12:37</td>
<td>Methods of distribution</td>
</tr>
<tr>
<td>§ 12:38</td>
<td>Distribution at stated ages</td>
</tr>
<tr>
<td>§ 12:39</td>
<td>Distribution in stages</td>
</tr>
<tr>
<td>§ 12:40</td>
<td>Invasion provision</td>
</tr>
<tr>
<td>§ 12:41</td>
<td>Distinguished from right of access to principal</td>
</tr>
<tr>
<td>§ 12:42</td>
<td>Consideration of other resources</td>
</tr>
<tr>
<td>§ 12:43</td>
<td>Standard of invasion</td>
</tr>
<tr>
<td>§ 12:44</td>
<td>Emergency needs</td>
</tr>
<tr>
<td>§ 12:45</td>
<td>Support</td>
</tr>
<tr>
<td>§ 12:46</td>
<td>Standard of living</td>
</tr>
<tr>
<td>§ 12:47</td>
<td>Education</td>
</tr>
<tr>
<td>§ 12:48</td>
<td>Type of education</td>
</tr>
<tr>
<td>§ 12:49</td>
<td>Related expenses</td>
</tr>
<tr>
<td>§ 12:50</td>
<td>Avoid incentive for beneficiary to prolong studies</td>
</tr>
</tbody>
</table>
§ 12:51 Unascertainable standards
§ 12:52 Use of ascertainable vs. nonascertainable standards
§ 12:53 Selection of trustee
§ 12:54 Limits on trustee's actions for own benefit
§ 12:55 Single vs. multiple invasion provisions
§ 12:56 Application by trustee rather than direct payment
§ 12:57 Need for invasion provision
§ 12:58 Termination provision
§ 12:59 Flexibility
§ 12:60 Costs of administration
§ 12:61 Financial stability
§ 12:62 Divorce
§ 12:63 Religion
§ 12:64 Discretion of trustee
§ 12:65 Powers of appointment
§ 12:66 Allows consideration for changing circumstances
§ 12:67 Right to distribute property at death
§ 12:68 Care of animals

E. RULES AGAINST PERPETUITIES

§ 12:69 360 Year rule against perpetuities
§ 12:70 Why Florida has not repealed the rule against perpetuities
§ 12:71 Exceptions to rule against perpetuities
§ 12:72 Non-judicial modification of trusts
§ 12:73 Judicial modification of trusts

CHAPTER 13. PRINCIPAL AND INCOME

A. ALLOCATION METHODS, GENERALLY

§ 13:1 Importance of allocation
§ 13:2 Trusts
§ 13:3 Distinction between income for administrative versus tax purposes
§ 13:4 Allocation by will or trust
§ 13:5 Allocation by personal representative or trustee

B. PRINCIPAL AND INCOME ACT

§ 13:6 Trustee's power to adjust
§ 13:7 Prohibitions against trustee's power to adjust
§ 13:8 Trustee's power to convert to total return unitrust
§ 13:9 Prohibitions against trustee's power to convert
§ 13:10 Unitrust rate

xlii
<table>
<thead>
<tr>
<th>§</th>
<th>Section Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§13:11</td>
<td>Statutory determination and distribution of income</td>
</tr>
<tr>
<td>§13:12</td>
<td>Income receipts</td>
</tr>
<tr>
<td>§13:13</td>
<td>Rentals</td>
</tr>
<tr>
<td>§13:14</td>
<td>Interest</td>
</tr>
<tr>
<td>§13:15</td>
<td>Zero coupon bonds</td>
</tr>
<tr>
<td>§13:16</td>
<td>Dividends</td>
</tr>
<tr>
<td>§13:17</td>
<td>Real estate investment trust</td>
</tr>
<tr>
<td>§13:18</td>
<td>Publicly Traded Entities</td>
</tr>
<tr>
<td>§13:19</td>
<td>Insurance policies</td>
</tr>
<tr>
<td>§13:20</td>
<td>Deferred compensation</td>
</tr>
<tr>
<td>§13:21</td>
<td>Life Estates</td>
</tr>
<tr>
<td>§13:22</td>
<td>Natural resources</td>
</tr>
<tr>
<td>§13:23</td>
<td>Timber</td>
</tr>
<tr>
<td>§13:24</td>
<td>Liquidating asset</td>
</tr>
<tr>
<td>§13:25</td>
<td>Estate income</td>
</tr>
<tr>
<td>§13:26</td>
<td>Asset-based securities</td>
</tr>
<tr>
<td>§13:27</td>
<td>Income expenses</td>
</tr>
<tr>
<td>§13:28</td>
<td>Ordinary administration expenses</td>
</tr>
<tr>
<td>§13:29</td>
<td>Trustee commissions</td>
</tr>
<tr>
<td>§13:30</td>
<td>Taxes on income</td>
</tr>
<tr>
<td>§13:31</td>
<td>Judicial proceeding</td>
</tr>
<tr>
<td>§13:32</td>
<td>Insurance premiums</td>
</tr>
<tr>
<td>§13:33</td>
<td>Depreciation</td>
</tr>
<tr>
<td>§13:34</td>
<td>Reimbursement of principal</td>
</tr>
<tr>
<td>§13:35</td>
<td>Underproductive property</td>
</tr>
<tr>
<td>§13:36</td>
<td>Sale of trust property</td>
</tr>
<tr>
<td>§13:37</td>
<td>Waiver of statute</td>
</tr>
<tr>
<td>§13:38</td>
<td>When right to income arises</td>
</tr>
<tr>
<td>§13:39</td>
<td>Right arising under trust</td>
</tr>
<tr>
<td>§13:40</td>
<td>Right arising under a will</td>
</tr>
<tr>
<td>§13:41</td>
<td>Termination of income rights</td>
</tr>
<tr>
<td>§13:42</td>
<td>Distribution of income earned during administration of a decedent's estate</td>
</tr>
<tr>
<td>§13:43</td>
<td>Specific devisees</td>
</tr>
<tr>
<td>§13:44</td>
<td>Outright pecuniary bequests</td>
</tr>
<tr>
<td>§13:45</td>
<td>Residuary beneficiaries</td>
</tr>
<tr>
<td>§13:46</td>
<td>Determining principal</td>
</tr>
<tr>
<td>§13:47</td>
<td>Principal receipts</td>
</tr>
<tr>
<td>§13:48</td>
<td>Sale of principal asset</td>
</tr>
<tr>
<td>§13:49</td>
<td>Estate/trust receipts</td>
</tr>
<tr>
<td>§13:50</td>
<td>Reimbursements</td>
</tr>
<tr>
<td>§13:51</td>
<td>Eminent domain</td>
</tr>
<tr>
<td>§13:52</td>
<td>Undistributable income</td>
</tr>
<tr>
<td>§13:53</td>
<td>Insurance proceeds</td>
</tr>
</tbody>
</table>
§ 13:54 Receipts from various entities
§ 13:55 Rental property
§ 13:56 Obligation to pay money
§ 13:57 Insubstantial allocations
§ 13:58 Options
§ 13:59 Principal expenses
§ 13:60 Trustee compensation
§ 13:61 Debt
§ 13:62 Construction/protection proceedings
§ 13:63 Insurance premiums
§ 13:64 Taxes
§ 13:65 Environmental matters
§ 13:66 Improvements
§ 13:67 Reimbursement of income
§ 13:68 Inapplicability of statutory rules

CHAPTER 14. TAX APPORTIONMENT

A. TAX APPORTIONMENT CLAUSES

§ 14:1 Importance
§ 14:2 Testator's right to direct payment method
§ 14:3 Apportionment for estate planning purposes
§ 14:4 Requirements for effective apportionment clause
§ 14:5 Florida apportionment requirements, effective October 1, 1998 and July 1, 2015
§ 14:6 Federal apportionment requirements
§ 14:7 Other federal statutes
§ 14:8 Limits on ability to apportion taxes
§ 14:9 Exception
§ 14:10 Allocation of death taxes against probate taxes
§ 14:11 Applicability to living trusts
§ 14:12 Possible invalidity of applicability to living trusts
§ 14:13 Consistency
§ 14:14 Potential problems from inconsistency
§ 14:15 Drafting considerations

B. STATUTORY APPORTIONMENT

§ 14:16 Federal tax apportionment
§ 14:17 Florida statutory apportionment
§ 14:18 Specific devises
§ 14:19 Residuary gifts
§ 14:20 Specific gifts in living trusts
§ 14:21 Residuary gifts in living trusts
§ 14:22 Homestead, Exempt Property and Family Allowance
§ 14:23 Non-probate assets
§ 14:24 Florida statutory apportionment effective October 1, 1998 and July 1, 2015
§ 14:25 Specific devises
§ 14:26 Residuary gifts
§ 14:27 Specific gifts in living trusts
§ 14:28 Residuary gifts in living trust
§ 14:29 Homestead, Exempt Property and Family Allowance
§ 14:30 Nonprobate assets
§ 14:31 Payment of taxes

CHAPTER 15. POWERS OF PERSONAL REPRESENTATIVES, TRUSTEES, AND TRUST ADVISORS

A. STATUTORY POWERS AND LIMITATIONS ON POWERS OF PERSONAL REPRESENTATIVES

§ 15:1 Powers
§ 15:2 Administer and distribute estate
§ 15:3 Intestate assets
§ 15:4 Settlement of estate
§ 15:5 Possession and control of assets
§ 15:6 Payments from living trust
§ 15:7 Pay obligations
§ 15:8 Retain assets
§ 15:9 Contracts
§ 15:10 Receive assets
§ 15:11 Invest
§ 15:12 Buy and sell
§ 15:13 Repairs
§ 15:14 Leases
§ 15:15 Natural resources
§ 15:16 Abandon property
§ 15:17 Vote securities
§ 15:18 Calls
§ 15:19 Nominee
§ 15:20 Insurance
§ 15:21 Borrow or lend
§ 15:22 Collection of debts
§ 15:23 Taxes
§ 15:24 Stock subscriptions
§ 15:25 Allocate receipts and disbursements
§ 15:26 Employ agents
§ 15:27 Claims
§ 15:28 Personal property
§ 15:29 Business interests
§ 15:30 Exoneration
§ 15:31 Claims
§ 15:32 Tax waivers
§ 15:33 Partial distribution
§ 15:34 Execution of documents
§ 15:35 Limitations on powers
§ 15:36 Act properly and in good faith
§ 15:37 Conflicts of interest

B. STATUTORY POWERS AND STATUTORY LIMITATIONS ON POWERS OF TRUSTEES

§ 15:38 Powers
§ 15:39 Payment of estate expenses
§ 15:40 Retain assets
§ 15:41 Receive additions
§ 15:42 Business interests
§ 15:43 Undivided interests
§ 15:44 Invest
§ 15:45 Use affiliated bank
§ 15:46 Buy and sell
§ 15:47 Repairs
§ 15:48 Subdivide
§ 15:49 Leases
§ 15:50 Natural resources
§ 15:51 Options
§ 15:52 Vote securities
§ 15:53 Calls
§ 15:54 Stock subscription
§ 15:55 Nominee
§ 15:56 Insurance
§ 15:57 Borrow or lend
§ 15:58 Claims
§ 15:59 Taxes
§ 15:60 Allocate receipts and disbursements
§ 15:61 Disability
§ 15:62 Distribution
§ 15:63 Employ agents
§ 15:64 Claims of trustees
§ 15:65 Execution of documents
§ 15:66 Combination of Trusts
C. WILL AND TRUST PROVISIONS

§ 15:72 Inconsistencies in statutory powers
§ 15:73 Careful review of statutes necessary where similar powers granted
§ 15:74 Granting broader powers
§ 15:75 Risks associated with broader powers
§ 15:76 Additional powers
§ 15:77 Investments
§ 15:78 Loans
§ 15:79 Real property
§ 15:80 Mortgages
§ 15:81 Distribution in kind
§ 15:82 Avoid intervening distribution to trustee
§ 15:83 Tax elections
§ 15:84 Alternate valuation
§ 15:85 Marital deduction
§ 15:86 Joint returns
§ 15:87 Split gifts
§ 15:88 Deductions
§ 15:89 Generation skipping exemption
§ 15:90 Merge or pool trusts
§ 15:91 Specific assets
§ 15:92 Sign checks
§ 15:93 General authority
§ 15:94 Limitations on statutory powers
§ 15:95 Specific direction
§ 15:96 Limiting powers for tax purposes
§ 15:97 Drafting techniques
§ 15:98 Restatement of powers
§ 15:99 Advantage
§ 15:100 Disadvantage
§ 15:101 Statutory powers unlisted
§ 15:102 Disadvantages of techniques
§ 15:103 Incorporation by reference
§ 15:104 Effect of changes in law
§ 15:105 General authority only
§ 15:106 Drafting consideration
D. TRUST ADVISORS

§ 15:107 Powers
§ 15:108 Fiduciary duty
§ 15:109 Trustee’s obligations

CHAPTER 16. APPOINTMENT OF PERSONAL REPRESENTATIVES, TRUSTEES AND DESIGNATED REPRESENTATIVES

A. STATUTORY QUALIFICATION REQUIREMENTS

§ 16:1 Personal representatives
§ 16:2 Adult
§ 16:3 Resident or family member
§ 16:4 Constitutionality of statutory disqualification
§ 16:5 Capacity
§ 16:6 Corporate personal representative
§ 16:7 Trustees

B. FACTORS IN SELECTION OF PERSONAL REPRESENTATIVES AND TRUSTEES

§ 16:8 Importance
§ 16:9 Size and complexity
§ 16:10 Small estates
§ 16:11 Large estates
§ 16:12 Familiarity with assets
§ 16:13 Familiarity with family
§ 16:14 Conflicts of interest
§ 16:15 Different or co-trustee
§ 16:16 Integrity
§ 16:17 Diligence
§ 16:18 Deep pockets
§ 16:19 Bonds
§ 16:20 Waiver of bond
§ 16:21 Bond by court order
§ 16:22 Trustee bonds
§ 16:23 Personality
§ 16:24 Empathy
§ 16:25 Location and age
§ 16:26 Location of trustee or personal representative
§ 16:27 Age of trustee or personal representative
§ 16:28 Taxes
§ 16:29 Expense
§ 16:30 Compensation of personal representatives
§ 16:31 Extraordinary services
§ 16:32 Regularly published fee schedule
§ 16:33 Written contract
§ 16:34 Will provision
§ 16:35 Two personal representatives
§ 16:36 Three or more personal representatives
§ 16:37 Estates valued less than $100,000
§ 16:38 Attorney serving as personal representative
§ 16:39 Compensation of trustees
§ 16:40 Determining reasonable compensation
§ 16:41 Compared to personal representative's compensation
§ 16:42 Multiple trustees
§ 16:43 Provision in trust
§ 16:44 Trustee may not renounce trust compensation
§ 16:45 Tax consequences
§ 16:46 Family member as personal representative or trustee
§ 16:47 Compensation still necessary

C. DESIGNATION OF PERSONAL
   REPRESENTATIVES AND TRUSTEES

§ 16:48 Family members
§ 16:49 Continuing trust for spouse
§ 16:50 Disadvantage to naming child as co-trustee
§ 16:51 Trust for children with children as co-trustees
§ 16:52 Disadvantage
§ 16:53 Distant family members as trustees
§ 16:54 Non-family members
§ 16:55 Corporate personal representatives and trustees
§ 16:56 Advantages
§ 16:57 Disadvantages and concerns
§ 16:58 Impersonal
§ 16:59 Costs
§ 16:60 Inability to choose specific officer
§ 16:61 Use of multiple personal representatives and trustees
§ 16:62 Majority action
§ 16:63 Three personal representatives/trustees
§ 16:64 More than three personal representatives/trustees
§ 16:65 Unanimous action
§ 16:66 Other arrangements for consent to act
§ 16:67 Designation of multiple children
§ 16:68 Child must have ability to act as fiduciary
§ 16:69 Use of different fiduciaries
§ 16:70 Multiple trusts—Multiple trustees
§ 16:71 Removal of personal representative and trustee
§ 16:72 Removal of corporate fiduciary
§ 16:73 Rationale
§ 16:74 Tax implications
§ 16:75 Considerations in changing corporate fiduciaries
§ 16:76 Designation of additional personal representatives and trustees
§ 16:77 Fiduciary’s desire for assistance
§ 16:78 Permits exercise of power otherwise prohibited
§ 16:79 Trust for spouse
§ 16:80 Limitations on right to add additional fiduciary
§ 16:81 Successor personal representatives and trustees
§ 16:82 No provision made
§ 16:83 Designation of successor fiduciaries
§ 16:84 Limited usefulness of naming successors
§ 16:85 Trustee chooses successor
§ 16:86 Statutory provisions for choosing successor fiduciaries

D. DESIGNATED REPRESENTATIVES

§ 16:87 Authority to select a designated representative
§ 16:88 Who may serve as a designated representative

CHAPTER 17. STANDARD OF CARE OF PERSONAL REPRESENTATIVES AND TRUSTEES

A. GENERAL STANDARD OF CARE OF PERSONAL REPRESENTATIVES AND TRUSTEES

§ 17:1 Negligence
§ 17:2 Contracts
§ 17:3 Torts
§ 17:4 Prior acts
§ 17:5 Exoneration from liability
§ 17:6 Actions against trustees after accounting
§ 17:7 Notice of accounting on or after January 1, 2003
§ 17:8 Trust disclosure document
§ 17:9 Limitation notice

B. INVESTMENTS

§ 17:10 Prudent investor rule
§ 17:11 Portfolio investments
§ 17:12 Specific skills
| § 17:13 | No prohibited assets |
| § 17:14 | Duty to diversify |
| § 17:15 | Review of portfolio |
| § 17:16 | Consider principal and income |
| § 17:17 | Economic conditions |
| § 17:18 | Purpose |
| § 17:19 | Problems with prior rule |
| § 17:20 | Test of conduct |
| § 17:21 | Reasonable investment strategy |
| § 17:22 | Waiver of rule |
| § 17:23 | Requirements for waiver |
| § 17:24 | Retention of assets |
| § 17:25 | Effect of rule |
| § 17:26 | Single investments |
| § 17:27 | Discretion vs. waiver |
| § 17:28 | Tax strategies |
| § 17:29 | Estate administration |
| § 17:30 | Small estates and trusts |
| § 17:31 | Cost |
| § 17:32 | Implementation of rule |
| § 17:33 | Use of investment advisors |
| § 17:34 | Selection |
| § 17:35 | Notice to beneficiaries |
| § 17:36 | Liability of advisor |

### C. ENVIRONMENTAL LIABILITY

| § 17:37 | Powers |
| § 17:38 | Inspection |
| § 17:39 | Prevention |
| § 17:40 | Claims |
| § 17:41 | Investigation expenses |
| § 17:42 | Disclaimer of property |
| § 17:43 | Liability |
| § 17:44 | Disclaimers |
| § 17:45 | Resignation |
| § 17:46 | Liability to beneficiaries |
| § 17:47 | Material participation |
| § 17:48 | Presumptions |
| § 17:49 | Purpose |

### D. DIRECTED AND EXCLUDED TRUSTEES

| § 17:50 | Scope of liability |
CHAPTER 18. NON-DISPOSITIVE PROVISIONS OF WILLS AND TRUSTS

A. ADMINISTRATIVE PROVISIONS

§ 18:1 Employment of agents
§ 18:2 Statutory authorization
§ 18:3 Court review
§ 18:4 Burden of proof
§ 18:5 Compensation of attorneys
§ 18:6 Compensation for other employees
§ 18:7 Minority provision
§ 18:8 Operation of provision
§ 18:9 Selecting age of majority
§ 18:10 Incapacity provision
§ 18:11 Guardianships
§ 18:12 Trusts for incapacitated beneficiaries
§ 18:13 Trusts when guardianship in effect
§ 18:14 Determination of incapacity
§ 18:15 Personal representative or trustee’s discretion
§ 18:16 Advantage of discretionary method
§ 18:17 Disadvantage
§ 18:18 Determination by physician(s)
§ 18:19 Combination with minority provision
§ 18:20 Tax consequences
§ 18:21 Spendthrift provision
§ 18:22 Provision recommended
§ 18:23 Drafting considerations
§ 18:24 Survival provision
§ 18:25 Effectiveness of plan undermined
§ 18:26 Use of survival provision
§ 18:27 Effectiveness of provision
§ 18:28 Specifying minimum survival period
§ 18:29 Statutory provisions
§ 18:30 Tax considerations
§ 18:31 Insurance
§ 18:32 Exercise of power of appointment
§ 18:33 Determining permissible appointees
§ 18:34 Specification of power exercised
§ 18:35 Statutory provisions
§ 18:36 Avoiding inadvertent exercise
§ 18:37 Attestation clause
§ 18:38 Self-proved affidavit
§ 18:39 Affidavit more convenient
B. CONSTRUCTION OF WILL

§ 18:40 Will and trust provisions
§ 18:41 Will passes all property
§ 18:42 Non-probate assets
§ 18:43 Power of appointment
§ 18:44 No rule governing trusts
§ 18:45 Anti-lapse under wills
§ 18:46 Devisee or beneficiary is a grandparent or lineal descendant of grandparent
§ 18:47 Devisee or beneficiary is not a grandparent or lineal descendant of a grandparent
§ 18:48 Anti-lapse under inter vivos and testamentary trusts
§ 18:49 Beneficiary is a grandparent or lineal descendant of a grandparent
§ 18:50 Beneficiary is not a grandparent or lineal descendant of a grandparent
§ 18:51 Inter vivos or testamentary trusts irrevocable as of July 1, 2007
§ 18:52 Common law rule
§ 18:53 Problems with common law rule
§ 18:54 Drafting consideration
§ 18:55 Ademption rules
§ 18:56 Guardian of property
§ 18:57 No statute governing living trusts
§ 18:58 Ademption by satisfaction
§ 18:59 No statute applies to gifts under a living trust
§ 18:60 Adopted children and children born out of wedlock
§ 18:61 Adopted children
§ 18:62 Persons born out of wedlock
§ 18:63 Gifts to be per stirpes
§ 18:64 Per stirpes explained
§ 18:65 Per capita explained
§ 18:66 Per stirpes distribution and anti-lapse statute
§ 18:67 Per stirpes gifts under trusts
§ 18:68 Possible anti-lapse provision for class gifts
§ 18:69 Drafting consideration

CHAPTER 19. HOMESTEAD

A. INTRODUCTION TO HOMESTEAD

§ 19:1 Purpose of homestead
§ 19:2 Overview of the term “homestead”
§ 19:3 Real estate tax benefits
§ 19:4 Descent and distribution concept distinct from property tax concept
§ 19:5 Restrictions on alienation during lifetime
§ 19:6 Inter vivos alienation of homestead can often run afoul of restrictions on the devise of homestead
§ 19:7 History of homestead
§ 19:8 Effect of change in definition of homesteader
§ 19:9 Definition of Protected Homestead

B. CHARACTERISTICS OF PROPERTY DEEMED BY THE FLORIDA CONSTITUTION TO BE HOMESTEAD

§ 19:10 Ownership by a natural person
§ 19:11 Ownership by trust
§ 19:12 Ownership and cooperative apartments
§ 19:13 Florida domiciliary
§ 19:14 Definition of devise
§ 19:15 Land outside municipality
§ 19:16 Land within a municipality
§ 19:17 Size restrictions pertain to restrictions on devise not just forced sale
§ 19:18 Homestead remains homestead even if a contract for its sale exists at the decedent's death
§ 19:19 An heir's contractual interest in decedent's homestead is not homestead property
§ 19:20 Homestead is still protected even if is sold before determined to be homestead
§ 19:21 Construction of constitution

C. RELATIONSHIP BETWEEN HOMESTEAD AND INTESTACY

§ 19:22 Descent according to homestead law overrides provisions for devise under a will
§ 19:23 Descent according to intestacy laws
§ 19:24 No devise of homestead if decedent has minor child
§ 19:25 Minor children vs. lineal descendants
§ 19:26 Decedent survived by spouse and no descendants
§ 19:27 Descent vests life interest in surviving spouse, remainder to decedent's descendants, per stirpes
§ 19:28 Constitutional provisions do not prevent devise where there is no spouse or minor child

D. DEVISE OF HOMESTEAD

§ 19:29 Devise to surviving spouse according to statute
§ 19:30 Devise to spouse must be absolute
§ 19:31 Devise against provisions of constitution and statute fails
§ 19:32 Homesteader may not devise property through a revocable trust to circumvent statute
§ 19:33 Where devise by trust is valid
§ 19:34 Disclaimer by spouse cannot retroactively fix an invalid devise

E. PLANNING OPTIONS
§ 19:35 Homestead owned as tenancy by the entireties
§ 19:36 Homestead owned as joint tenant with rights of survivorship
§ 19:37 Spouse has right of election to convert life estate into tenancy in common
§ 19:38 Form: Election of Surviving Spouse to Take a One-Half Interest of Decedent's Interest in Homestead Real Property
§ 19:39 Unmarried homesteader with minor children
§ 19:40 Inter vivos transfer may avoid vesting of homestead in minor
§ 19:41 Homestead not specifically devised passes through residue
§ 19:42 Homestead not protected if not devised to heir
§ 19:43 Homestead passes free of claims of creditors and administration expenses unless otherwise specifically directed
§ 19:44 Homestead not subject to creditors even if it passes by will to remote heirs

F. HOMESTEAD AND PROBATE
§ 19:45 Homestead is not probate asset
§ 19:46 Power of Personal Representative to take possession of homestead
§ 19:47 Personal Representative may not mortgage homestead
§ 19:48 Income derived from homestead and liens thereon

G. EFFECT OF WAIVER
§ 19:49 Waiver under statute
§ 19:50 Waiver of rights is valid
§ 19:51 Waiver of rights of surviving spouse is not a waiver of rights of a minor child
§ 19:52 Liens
CHAPTER 20. EXEMPT PROPERTY AND FAMILY ALLOWANCE

A. EXEMPT PROPERTY

§ 20:1 What is exempt property?
§ 20:2 What property is included as exempt?
§ 20:3 What property is excluded as exempt?
§ 20:4 Which creditors are excepted from the protection of exempt property?
§ 20:5 Exempt property distinguished from other forms of “exempt property”
§ 20:6 Exempt property is in addition to other benefits afforded to the spouse or children
§ 20:7 Deadline for filing for exempt property
§ 20:8 Procedure to determine exempt property

B. FAMILY ALLOWANCE

§ 20:9 Persons entitled to family allowance
§ 20:10 Lineal ascendants and descendants must have been dependent on decedent
§ 20:11 Payment of family allowance
§ 20:12 Amount
§ 20:13 Source of payment
§ 20:14 Separate from other property inherited from estate
§ 20:15 Entitlement terminates on death
§ 20:16 Payment to surviving spouse for distribution to others
§ 20:17 Surviving spouse not living
§ 20:18 Surviving spouse and lineal heir living apart
§ 20:19 Timing of payment
§ 20:20 Effect of payment upon administration of estate
§ 20:21 Form and contents of petition
§ 20:22 Persons entitled to family allowance
§ 20:23 Order of court
§ 20:24 Attorney’s fees

CHAPTER 21. ELECTIVE SHARE OF SURVIVING SPOUSE

A. INTRODUCTION

§ 21:1 1999 overhaul of the elective share statute
§ 21:2 Purpose of 2017 changes to elective share statute
TABLE OF CONTENTS

§ 21:3 Inherited wealth
§ 21:4 Life insurance
§ 21:5 Trusts
§ 21:6 Constitutionality of elective share
§ 21:7 Elective share provides a minimum distribution to spouse
§ 21:8 Computation

B. PROPERTY INCLUDED IN THE ELECTIVE ESTATE

§ 21:9 Types of assets included in the elective estate
§ 21:10 Probate estate
§ 21:11 Protected homestead
§ 21:12 Co-owned, “pay on death,” and “in trust for” accounts
§ 21:13 Joint tenancies and tenancies-by-the-entirety for assets other than bank and stock accounts
§ 21:14 Revocable transfers
§ 21:15 Retained interests
§ 21:16 Life insurance
§ 21:17 Retirement plans
§ 21:18 Property that was transferred during the one year period preceding the decedent’s death
§ 21:19 Property transferred in satisfaction of the elective share
§ 21:20 Overlapping application

C. PROPERTY EXCLUDED FROM THE ELECTIVE ESTATE

§ 21:21 Types of property excluded
§ 21:22 Exclusions based on concept of fairness
§ 21:23 Exclusions based on concept of replacement
§ 21:24 Exclusions based on concept of that which is implicit
§ 21:25 Waivers
§ 21:26 Hidden exclusion

D. VALUATION

§ 21:27 Valuation concepts
§ 21:28 Valuation of property entering into the elective estate—General rule
§ 21:29 Valuation of protected homestead for purposes of valuing the elective estate
§ 21:30 Valuation of life insurance for purposes of valuing the elective estate
§ 21:31 Valuation of retirement accounts for purposes of valuing the elective estate
§ 21:32 Valuation date for property used to satisfy the elective share
§ 21:33 Valuation of property used to satisfy the elective share
§ 21:34 Valuation of life interest not in trust when used to satisfy the elective estate
§ 21:35 Valuation of interest in homestead where spouse elects to take undivided one-half interest when used to satisfy the elective estate
§ 21:36 Valuation of interest in homestead where spouse validly waives his or her interest but nevertheless receives an interest in the homestead, when such interest is used to satisfy the elective estate
§ 21:37 What is the definition of “elective share trust”
§ 21:38 What constitutes the income of a trust for purposes of an elective share trust
§ 21:39 Valuation of an elective share trust when used to satisfy the elective estate
§ 21:40 Definition of a qualified special needs trust
§ 21:41 Valuation of a qualifying special needs trust when used to satisfy the elective estate
§ 21:42 Valuation of trusts not meeting the requirements of an elective share trust or qualifying special needs trust when used to satisfy the elective estate
§ 21:43 Valuation of life insurance when used to satisfy the elective share
§ 21:44 Valuation of annuity payments when used to satisfy the elective share

E. ISSUES RELATING TO PAYMENT OF THE ELECTIVE SHARE

§ 21:45 Sources of payment in satisfaction of the elective share made to the spouse in a qualifying manner
§ 21:46 Sources of payment in satisfaction of the elective share from property devised to others
§ 21:47 Liability of direct recipients and beneficiaries for contribution to the elective share
§ 21:48 Protection of payers and other third parties
§ 21:49 Personal representative’s duty to collect contribution
§ 21:50 Award of fees and costs in elective share proceedings

F. MECHANICS OF MAKING ELECTION

§ 21:51 Introduction
CHAPTER 22. INTESTATE SUCCESSION AND PRETERMITTED SPOUSE AND CHILDREN

A. INTESTATE SUCCESSION

§ 22:1 When assets pass via intestacy
§ 22:2 When intestate assets vest
§ 22:3 Spouse’s share of the intestate estate
§ 22:4 Share of other heirs
§ 22:5 Heirs do not need to prove nonexistence of other heirs
§ 22:6 Descent per stirpes
§ 22:7 Half-blood
§ 22:8 Afterborn heirs
§ 22:9 Adopted persons
§ 22:10 Person born out of wedlock
§ 22:11 Persons barred from inheriting an intestate share

B. PUBLIC POLICY

§ 22:12 Policy reasons for pretermitted spouse and children laws

C. PRETERMITTED SPOUSE

§ 22:13 Entitled to intestate share
§ 22:14 When spouse is not pretermitted
§ 22:15 Valid marriage required
§ 22:16 Look to judicial interpretation
§ 22:17 Burden to prove pretermitted status
§ 22:18 Reference to individual who becomes spouse may not be provision for “spouse”
§ 22:19 Invalid will allows collection as pretermitted spouse
§ 22:20 Pretermitted spouse may be liable for debts of the estate

D. PRETERMITTED CHILDREN

§ 22:21 Application of statute
CHAPTER 23. SPOUSAL RIGHTS UNDER QUALIFIED RETIREMENT PLANS

A. INTRODUCTION

§ 23:1 Advantages of spouse as beneficiary of qualified retirement plan and IRA benefits
§ 23:2 Simple to implement and understand
§ 23:3 Availability of marital tax deduction
§ 23:4 Spouse can roll over benefits into own IRA
§ 23:5 Disadvantage of spouse as beneficiary: management of funds
§ 23:6 Benefits paid to marital trust
§ 23:7 Limits on use of marital trust as beneficiary
§ 23:8 Law may limit use
§ 23:9 Minimum distribution required
§ 23:10 Requirements for marital deduction
§ 23:11 Consideration of IRD rules

B. LIMITATIONS ON BENEFICIARY DESIGNATIONS

§ 23:12 Generally
§ 23:13 Spouse must waive qualified joint and survivor annuity provisions
§ 23:14 Limitation by terms of plan

C. REQUIRED MINIMUM DISTRIBUTIONS RULES

§ 23:15 Generally
§ 23:16 Sets timing of payments
§ 23:17 Penalty for violation
§ 23:18 Distribution requirements
§ 23:19 The final minimum distribution regulations
§ 23:20 The 2001 regulations
§ 23:21 What the final regulations do
§ 23:22 Distribution rules—Uniform distribution period
§ 23:23 Death prior to required beginning date
§ 23:24 Death after required beginning date
§ 23:25 Transition rule, in general
D. QUALIFICATION FOR MARITAL DEDUCTION

§ 23:30 Generally
§ 23:31 Lump-sum distributions to QTIP trusts
§ 23:32 Installment distributions to QTIP trusts
§ 23:33 Property that passes from a decedent
§ 23:34 Trustee cannot direct distribution
§ 23:35 Make plan or designation irrevocable and distribution non-modifiable
§ 23:36 Qualifying income interest for life
§ 23:37 Power of appointment restriction
§ 23:38 Right to all income payable annually
§ 23:39 Revenue Ruling 89–89
§ 23:40 Limits of Rev. Rul. 89–89 as a guide
§ 23:41 Private letter rulings issued since Rev. Rul. 89–89
§ 23:42 IRS approach in satisfying the income requirement
§ 23:43 Language in the plan or IRA documents
§ 23:44 Language in the marital trust
§ 23:45 Methods to ensure assets are producing income
§ 23:46 Give trustee power to ensure income is generated
§ 23:47 Give trustee authority to distribute principal in lieu of income
§ 23:48 Trustee must be able to determine and quantify income
§ 23:49 The QTIP election

E. BENEFITS AS INCOME IN RESPECT OF A DECEDEDENT

§ 23:50 Avoid acceleration of income

Appendix A. Uniform lifetime table
Appendix B. New uniform lifetime table v. 2001 regulations table
Appendix C. Single life table—Used by designated beneficiaries who inherit IRAs (e.g. kids)
CHAPTER 24. MEDICAID ELIGIBILITY AND REIMBURSEMENT OF MEDICAL EXPENSES PAID BY STATE

A. FLORIDA INSTITUTIONAL CARE PROGRAM
   § 24:1 In general

B. MEDICAID QUALIFYING TRUSTS
   § 24:2 Law prior to 1993
   § 24:3 Counted in determining eligibility under new statute

C. REVOCABLE GRANTOR TRUSTS
   § 24:4 Counted in determining eligibility
   § 24:5 Other features of revocable grantor trust
   § 24:6 Trust created by third person may not be considered in Medicaid eligibility
   § 24:7 Spouse may not be the third person
   § 24:8 —Transfer to spouse outside of trust
   § 24:9 Certain characteristics of trust may make assets eligible
   § 24:10 Exceptions

D. IRREVOCABLE TRUSTS
   § 24:11 Effect of irrevocable trust on eligibility
   § 24:12 Use of irrevocable trust extends amount of time for eligibility
   § 24:13 —Florida qualified income trusts
   § 24:14 Look back periods
   § 24:15 Penalty periods

E. LIENS AND RECOVERIES
   § 24:16 State programs to recover Medicaid costs
   § 24:17 States have broad powers to enforce programs
   § 24:18 Exception to state’s authority
   § 24:19 Long-term care insurance partnership program

Appendix A. Eligibility Standards for SSI-Related Programs: January 2019
Appendix B. Qualified Income Trust Information Sheet
Appendix C. Long-Term Care Insurance Partnership Program

lxii
CHAPTER 25. MARITAL AGREEMENTS

A. GENERALLY

§ 25:1 Sources of authority
§ 25:2 Uniform Premarital Agreement Act
§ 25:3 Effect of Probate Code
§ 25:4 Purpose of agreements
§ 25:5 Rights which may be subject to a premarital agreement
§ 25:6 Support may be required to prevent spouse from receiving public benefits
§ 25:7 Specific testamentary rights which can be waived
§ 25:8 Waiver of “all rights”
§ 25:9 Drafting considerations

B. FORMALITIES

§ 25:10 Effective date and consideration of premarital agreement
§ 25:11 Effective date and consideration of postnuptial agreement
§ 25:12 Formalities for executing a premarital agreement
§ 25:13 Formalities required for amending or revoking a premarital agreement

C. NEED FOR INDEPENDENT COUNSEL

§ 25:14 Parties should have separate counsel
§ 25:15 May be factor in challenging the agreement
§ 25:16 Other reasons for independent counsel

D. ENFORCEABILITY

§ 25:17 When a premarital agreement is not enforceable
§ 25:18 Effect of unconscionability
§ 25:19 Effect of void marriage

E. FINANCIAL DISCLOSURE

§ 25:20 Financial disclosure generally
§ 25:21 What constitutes fair disclosure

F. EFFECT OF RECONCILIATION

§ 25:22 Effect of reconciliation or remarriage
§ 25:23 Agreements may provide that provisions do not apply in the event of reconciliation
§ 25:24 Agreements may also provide that provisions do apply in the event of reconciliation
§ 25:25 Definition of “separation and reconciliation”

G. FORMS
Form 25:26 Premarital agreement

Volume 13

CHAPTER 26. OVERVIEW OF THE TRANSFER TAX SYSTEM

A. THE FEDERAL TRANSFER TAX SYSTEM FOR U.S. CITIZENS AND RESIDENTS

§ 26:1 Nature of transfer tax
§ 26:2 Gift tax
§ 26:3 Estate tax
§ 26:4 Transfers completed before death
§ 26:5 Generation-skipping transfer tax
§ 26:6 History of the estate tax: Phase-out, repeal and reenactment
§ 26:7 Computation of transfer tax
§ 26:8 Step 1: Determination of property value
§ 26:9 Step 2: Subtraction of applicable deductions and exclusions
§ 26:10 Step 3: Prior taxable gifts are added to either: (1) current year taxable gifts; or (2) the decedent’s taxable estate
§ 26:11 Step 4: Determine tentative tax
§ 26:12 Step 5: Determine the gross tax
§ 26:13 Step 6: Reduce the gross tax by all applicable credits
§ 26:14 Sample computation of estate tax liability
§ 26:15 Pre–2002 Rate schedule
§ 26:16 Post–2001 Rate schedule
§ 26:17 History of unified rate structure
§ 26:18 Pre–1976 rate structure
§ 26:19 Reductions to tentative tax
§ 26:20 Split gift
§ 26:21 Tax credits
§ 26:22 Four estate tax credits
§ 26:23 Two gift tax credits
§ 26:24 Unified credit
### Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 26:25</td>
<td>Use of the unified credit</td>
</tr>
<tr>
<td>§ 26:26</td>
<td>History of unified credit</td>
</tr>
<tr>
<td>§ 26:27</td>
<td>Pattern of increases to the unified credit</td>
</tr>
<tr>
<td>§ 26:28</td>
<td>State death tax credit is eliminated in 2005</td>
</tr>
<tr>
<td>§ 26:29</td>
<td>State death taxes</td>
</tr>
<tr>
<td>§ 26:30</td>
<td>“Sponge,” “pick-up” or “soak-up” taxes</td>
</tr>
<tr>
<td>§ 26:31</td>
<td>State decoupling from the federal estate tax law</td>
</tr>
<tr>
<td>§ 26:32</td>
<td>Gift tax credit for gifts made before 1977</td>
</tr>
<tr>
<td>§ 26:33</td>
<td>Prior transfer tax credit</td>
</tr>
<tr>
<td>§ 26:34</td>
<td>Obtaining the prior transfer tax credit</td>
</tr>
<tr>
<td>§ 26:35</td>
<td>Tax must be on both estates</td>
</tr>
<tr>
<td>§ 26:36</td>
<td>No equivalent credit for gift tax</td>
</tr>
<tr>
<td>§ 26:37</td>
<td>Foreign death tax credit</td>
</tr>
<tr>
<td>§ 26:38</td>
<td>Estate tax treaties</td>
</tr>
<tr>
<td>§ 26:39</td>
<td>Foreign gift tax credit</td>
</tr>
<tr>
<td>§ 26:40</td>
<td>Some foreign taxes do not qualify for the foreign death tax credit</td>
</tr>
<tr>
<td>§ 26:41</td>
<td>Assets owned at death</td>
</tr>
<tr>
<td>§ 26:42</td>
<td>Property located in another country</td>
</tr>
<tr>
<td>§ 26:43</td>
<td>Valuation of assets</td>
</tr>
<tr>
<td>§ 26:44</td>
<td>Special use valuation</td>
</tr>
<tr>
<td>§ 26:45</td>
<td>Alternate value</td>
</tr>
<tr>
<td>§ 26:46</td>
<td>Restrictions on use of alternate valuation</td>
</tr>
<tr>
<td>§ 26:47</td>
<td>Form 8971</td>
</tr>
<tr>
<td>§ 26:48</td>
<td>Transfers prior to death</td>
</tr>
<tr>
<td>§ 26:49</td>
<td>Transfers within three years of death</td>
</tr>
<tr>
<td>§ 26:50</td>
<td>History of three-year rule</td>
</tr>
<tr>
<td>§ 26:51</td>
<td>Gift tax exception</td>
</tr>
<tr>
<td>§ 26:52</td>
<td>Gift tax paid by donee</td>
</tr>
<tr>
<td>§ 26:53</td>
<td>Transferee tax liability</td>
</tr>
<tr>
<td>§ 26:54</td>
<td>State gift taxes not included</td>
</tr>
<tr>
<td>§ 26:55</td>
<td>Exception for transfer of life insurance</td>
</tr>
<tr>
<td>§ 26:56</td>
<td>Exception for transfer of retained powers</td>
</tr>
<tr>
<td>§ 26:57</td>
<td>Transfers with retained interests</td>
</tr>
<tr>
<td>§ 26:58</td>
<td>Retained right to possession, enjoyment, or income</td>
</tr>
<tr>
<td>§ 26:59</td>
<td>Chapter 14 of Title 26 I.R.C</td>
</tr>
<tr>
<td>§ 26:60</td>
<td>GRITs, GRUTs and GRATs</td>
</tr>
<tr>
<td>§ 26:61</td>
<td>Transfers not fully effective until death</td>
</tr>
<tr>
<td>§ 26:62</td>
<td>Revocable transfers</td>
</tr>
<tr>
<td>§ 26:63</td>
<td>Prior taxable gifts made after 1976</td>
</tr>
<tr>
<td>§ 26:64</td>
<td>Prior taxable gifts made before 1977</td>
</tr>
<tr>
<td>§ 26:65</td>
<td>Establishing gift tax value for estate tax purposes</td>
</tr>
<tr>
<td>§ 26:66</td>
<td>Retirement plan benefits</td>
</tr>
<tr>
<td>§ 26:67</td>
<td>History of retirement plan benefits</td>
</tr>
</tbody>
</table>
§ 26:68 Prior to 1982
§ 26:69 Ten-year averaging
§ 26:70 TEFRA '92
§ 26:71 Tax Reform Act of 1984
§ 26:72 Grandfathered qualified plan benefits for persons retiring before 1985 or 1983
§ 26:73 Grandfathered IRA benefits for persons retiring before 1985 or 1983
§ 26:74 Jointly owned property
§ 26:75 Joint property with spouse
§ 26:76 Joint property with another person other than spouse
§ 26:77 Property held as tenancy in common
§ 26:78 Powers of appointment
§ 26:79 Definition of a general power of appointment
§ 26:80 Limited power is not a general power of appointment
§ 26:81 Lapse of a general power of appointment
§ 26:82 Exception to the general rule
§ 26:83 Crummey powers
§ 26:84 Life insurance
§ 26:85 Transfers for insufficient consideration
§ 26:86 Relinquishment of marital rights
§ 26:87 Exclusions introduced by the Taxpayer Relief Act of 1997
§ 26:88 Exclusion for qualified conservation easement
§ 26:89 Qualified conservation easement exclusion amount limit
§ 26:90 Exclusion percentage limit
§ 26:91 Land which qualifies for conservation easement
§ 26:92 The qualified family owned business exclusion (QFOBI)
§ 26:93 Funeral and administration expenses and debts
§ 26:94 Reasonable funeral expenses
§ 26:95 Administration expenses
§ 26:96 Conserve property
§ 26:97 Fiduciary Fees
§ 26:98 Legal fees
§ 26:99 Appraisal fees
§ 26:100 Deductibility of expenses incurred in selling property
§ 26:101 Debts of decedent, mortgages, and liens
§ 26:102 Deduction for estate taxes actually paid to any state or the District of Columbia
§ 26:103 Income tax for decedent’s final year
TABLE OF CONTENTS

§ 26:104 Charitable pledges
§ 26:105 Charitable deduction
§ 26:106 Application of the charitable deduction to split interest gifts
§ 26:107 Split interest gifts
§ 26:108 Marital deduction
§ 26:110 Pre–1982 wills and the phrase “maximum marital deduction”
§ 26:111 Types of marital deduction gifts
§ 26:112 Marital deduction for foreign spouses
§ 26:113 Generation-skipping transfer tax
§ 26:114 History of GST tax
§ 26:115 1986 Tax reform
§ 26:116 GST tax repealed in 2010

B. KEY CONCEPTS FOR NON–U.S. CITIZENS AND RESIDENTS
§ 26:117 Property subject to tax
§ 26:118 Assets included in estate
§ 26:119 When property deemed situated in U.S
§ 26:120 Special rules for expatriates
§ 26:121 Rates and credits
§ 26:122 Deductions for non-United States citizens
§ 26:123 Chart comparing estate tax rules for U.S. citizens and/or residents and non-resident aliens

C. PROVIDING TAX ADVICE TO CLIENTS—CIRCULAR 230 ISSUED IN DECEMBER 2004
§ 26:124 Introduction to Circular 230
§ 26:125 Application of Circular 230

D. FORMS
Form 26:126 Form 706
Form 26:127 Instructions for 706

CHAPTER 27. MARITAL DEDUCTION PLANNING

A. OPTIMAL USE OF THE MARITAL DEDUCTION AND UNIFIED CREDIT
§ 27:1 Unified credit
§ 27:2 Gifts made before September 8, 1976
§ 27:3 Gifts between September 8, 1976, and December 31, 1976
§ 27:4 Gifts made on or after January 1, 1977
§ 27:5 Marital deduction amount
§ 27:6 Includible in the decedent’s estate
§ 27:7 Passing from the decedent
§ 27:8 Will contests
§ 27:9 Marital deduction for United States citizens
§ 27:10 Marital deduction for non-U.S. citizens
§ 27:11 Interplay of unified credit and marital deduction
§ 27:12 Use of a credit shelter trust
§ 27:13 Options for a credit shelter trust
§ 27:14 Provisions for trust income
§ 27:15 Provisions for trust principal
§ 27:16 Lifetime power of appointment limited by ascertainable standard
§ 27:17 Ascertifiable standard
§ 27:18 Importance of ascertainable standard
§ 27:19 Fla. Stat. § 736.0814(2)
§ 27:20 Lifetime power of appointment limited to $5,000 or five percent per calendar year
§ 27:21 Testamentary limited power of appointment
§ 27:22 Portability
§ 27:23 Limitations of portability

B. SELECTING ASSETS FOR A CREDIT SHELTER TRUST

§ 27:24 Selecting assets for a credit shelter trust
§ 27:25 Assets must be available
§ 27:26 Homestead interest
§ 27:27 Disposition of residence
§ 27:28 Life estate in residence
§ 27:29 Residence in trust
§ 27:30 Caveat regarding IRD
§ 27:31 Income in respect to a decedent (IRD)
§ 27:32 Why minimize IRD in credit shelter trusts?
§ 27:33 IRD property in marital trust
§ 27:34 Strive to place appreciating assets in a credit shelter trust

C. SELECTING THE MARITAL DEDUCTION FORM AND QUALIFICATION ISSUES

§ 27:35 Selecting the marital deduction Form for U.S. citizen spouses
### TABLE OF CONTENTS

| § 27:36    | Outright gifts                  |
| § 27:37    | Life estates with general power of appointment |
| § 27:38    | Qualifying income interests for life estate |
| § 27:39    | Life income interest for life estate |
| § 27:40    | Income from the entire property or a specific portion |
| § 27:42    | Court’s rationale |
| § 27:43    | Drafting consideration |
| § 27:44    | Beneficial enjoyment |
| § 27:45    | No power of appointment to any other person |
| § 27:46    | General power of appointment by spouse |
| § 27:47    | Annuities with general power of appointment |
| § 27:48    | QTIP trusts |
| § 27:49    | Prior law |
| § 27:50    | Terminable interest |
| § 27:51    | “Six-month survivorship” exceptions |
| § 27:52    | “Exhausted interest” exception |
| § 27:53    | General power of appointment exception |
| § 27:54    | Trusts for which a QTIP election can be made |
| § 27:55    | Interplay of QTIP rules with qualified plan/IRA rules |
| § 27:56    | Entitlement to all of the trust income (stub income) |
| § 27:57    | IRS position regarding stub income |
| § 27:58    | Howard case regarding stub income |
| § 27:59    | No power of appointment to any other person |
| § 27:60    | Life estates for which QTIP election can be made |
| § 27:61    | Private letter ruling on life estate in residence |
| § 27:62    | Effect of a QTIP election |
| § 27:63    | Disposition of trust or property subject to life estate |
| § 27:64    | Charitable remainder marital trusts |
| § 27:65    | No double deduction for charitable trusts |
| § 27:66    | Unique planning opportunities |
| § 27:67    | Traditional marital trusts |
| § 27:68    | Charitable marital trust qualifying under I.R.C. § 2056(b)(8) |
| § 27:69    | Qualified contingency |
| § 27:70    | Valuation of qualified contingency |
| § 27:71    | Estate trusts |
| § 27:72    | Non-deductible terminable interests |

### D. MARITAL DEDUCTION VEHICLE FOR NON–UNITED STATES CITIZENS

| § 27:73    | Qualified domestic trusts (QDOTs) |
| § 27:74    | Gift tax marital deduction |
§ 27:75 Estate tax marital deduction and estate tax under § 2056A
§ 27:76 Hardship distributions
§ 27:77 Nature of § 2056A tax
§ 27:78 Rate of tax
§ 27:79 When tax is due
§ 27:80 Prior tax credit
§ 27:81 Requirements of a QDOT
§ 27:82 Final Regulations on trust requirements
§ 27:83 Making a timely QDOT election
§ 27:84 Transfers to a QDOT by the spouse
§ 27:85 Final regulations on annuity payments
§ 27:86 Portability and the QDOT

E. DEFINING THE MARITAL DEDUCTION SHARE

§ 27:87 Why use a formula?
§ 27:88 Size of the credit shelter trust
§ 27:89 States that do not impose a state estate tax
§ 27:90 States that impose a state estate tax
§ 27:91 Placement of the credit shelter trust
§ 27:92 Advantage to defining credit shelter first
§ 27:93 Advantage to defining as balance of estate
§ 27:94 Type of formula
§ 27:95 Fractional share
§ 27:96 True worth pecuniary amount
§ 27:97 Disadvantages of the true worth pecuniary method
§ 27:98 Recognition of gain
§ 27:99 Recognition of loss
§ 27:100 Risk of market decline
§ 27:101 Concern over market risk
§ 27:102 Advocates of pecuniary formulas
§ 27:103 Hybrid pecuniary
§ 27:104 Advantages of the hybrid method
§ 27:105 Treatment of administrative expenses charged to income

F. FORMS

Form 27:106 Sample five by five provision
Form 27:107 Sample limited testamentary power of appointment
Form 27:108 Sample life estate in residence provision
Form 27:109 Sample provision granting power in trustee to hold residential real property
CHAPTER 28. USE OF DISCLAIMERS

A. OVERVIEW AND REASONS FOR DISCLAIMERS

§ 28:1 What is a disclaimer
§ 28:2 Non-tax reasons to disclaim
§ 28:3 Tax reasons for disclaiming property interests
§ 28:4 Planned disclaimers
§ 28:5 Unplanned disclaimers

B. FLORIDA DISCLAIMER REQUIREMENTS

§ 28:6 Florida law
§ 28:7 Writing
§ 28:8 Irrevocability of disclaimer
§ 28:9 Delivery of disclaimer
§ 28:10 Disclaimer by Florida guardian or personal representative
§ 28:11 Insolvency as a bar to disclaimer in Florida
§ 28:12 Tax qualified disclaimers

C. FEDERAL DISCLAIMER REQUIREMENTS

§ 28:13 Federal law
§ 28:14 Interests created before 1977
§ 28:15 Current applicability of Pre-1977 Rules
§ 28:16 Practical considerations
§ 28:17 Jewett decision
§ 28:18 Irvine decision
§ 28:19 Disclaimer of interest created prior to gift tax law
§ 28:20 Interests created from 1977 to 1982
§ 28:21 Case illustrating rules for 1977 to 1982 time period
§ 28:22 Interests created in or after 1982
§ 28:23 Qualified disclaimers under I.R.C. §§ 2518(b) and (c)
§ 28:24 In writing
§ 28:25 Delivery of disclaimer
§ 28:26 Timely disclaimers
§ 28:27 Date of transfer
§ 28:28 Property passing by exercise or lapse of a general power
§ 28:29 Property passing by QTIP trust
§ 28:30 Property passing by exercise or lapse of a limited power of appointment
§ 28:31 Property passing by joint tenancy
§ 28:32 Bank accounts
§ 28:33 Stocks and bonds
§ 28:34 Real property
§ 28:35 No acceptance
§ 28:36 Entire interest, or entire portion of an interest, must be disclaimed
§ 28:37 All interests in income
§ 28:38 All interests in principal
§ 28:39 The entirety of a power
§ 28:40 Specific assets held in trust
§ 28:41 A pecuniary amount may be disclaimed
§ 28:42 An undivided portion
§ 28:43 Pass without direction to decedent’s spouse or person other than the disclaimant
§ 28:44 No regulations on I.R.C. § 2518(c)
§ 28:45 Case discussing I.R.C. § 2518(c) requirements

D. FORMS

Form 28:46 Example provisions for Disclaimer in declaration of living trust
Form 28:47 Simple Will Outright to Spouse, Contingent Disclaimer to Family Trust

CHAPTER 29. THE GENERATION-SKIPPING TRANSFER TAX

A. NATURE OF THE GENERATION-SKIPPING TRANSFER TAX

§ 29:1 Generally

lxxii
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 29:2</td>
<td>Objective of GST tax</td>
</tr>
<tr>
<td>§ 29:3</td>
<td>History of GST tax</td>
</tr>
<tr>
<td>§ 29:4</td>
<td>Certain wills executed before October 22, 1986</td>
</tr>
<tr>
<td>§ 29:5</td>
<td>Certain trusts that are irrevocable on September 25, 1985</td>
</tr>
<tr>
<td>§ 29:6</td>
<td>Certain trusts that are included in the transferor's estate</td>
</tr>
<tr>
<td>§ 29:7</td>
<td>Taxable events</td>
</tr>
<tr>
<td>§ 29:8</td>
<td>Taxable distributions</td>
</tr>
<tr>
<td>§ 29:9</td>
<td>Taxable terminations</td>
</tr>
<tr>
<td>§ 29:10</td>
<td>Skip person</td>
</tr>
<tr>
<td>§ 29:11</td>
<td>Generations</td>
</tr>
<tr>
<td>§ 29:12</td>
<td>Direct skip</td>
</tr>
<tr>
<td>§ 29:13</td>
<td>Interest in a trust</td>
</tr>
<tr>
<td>§ 29:14</td>
<td>Use of income or principal to satisfy obligations</td>
</tr>
<tr>
<td>§ 29:15</td>
<td>Support obligation exception</td>
</tr>
<tr>
<td>§ 29:16</td>
<td>Interests for postponement or avoidance disregarded</td>
</tr>
<tr>
<td>§ 29:17</td>
<td>Persons responsible for paying the tax</td>
</tr>
<tr>
<td>§ 29:18</td>
<td>Tax computation</td>
</tr>
<tr>
<td>§ 29:19</td>
<td>Taxable distribution</td>
</tr>
<tr>
<td>§ 29:20</td>
<td>Taxable termination</td>
</tr>
<tr>
<td>§ 29:21</td>
<td>Direct skip</td>
</tr>
<tr>
<td>§ 29:22</td>
<td>Credit for state GST tax</td>
</tr>
<tr>
<td>§ 29:23</td>
<td>Multiple skips in non-exempt trusts</td>
</tr>
<tr>
<td>§ 29:24</td>
<td>Multiple skips in exempt trusts</td>
</tr>
<tr>
<td>§ 29:25</td>
<td>Assignment of persons to generations</td>
</tr>
<tr>
<td>§ 29:26</td>
<td>Lineal descendants of Transferor and Transferor's Spouse</td>
</tr>
<tr>
<td>§ 29:27</td>
<td>Non-lineal descendants</td>
</tr>
<tr>
<td>§ 29:28</td>
<td>Assignments to more than one generation</td>
</tr>
<tr>
<td>§ 29:29</td>
<td>Assignment of entities to generations</td>
</tr>
<tr>
<td>§ 29:30</td>
<td>Inclusion ratio</td>
</tr>
<tr>
<td>§ 29:31</td>
<td>Applicable fraction</td>
</tr>
<tr>
<td>§ 29:32</td>
<td>Severing of trusts holding property having an inclusion ratio of greater than zero</td>
</tr>
<tr>
<td>§ 29:33</td>
<td>Valuation of property for determining inclusion ratio</td>
</tr>
<tr>
<td>§ 29:34</td>
<td>Charitable lead annuity trust</td>
</tr>
<tr>
<td>§ 29:35</td>
<td>ETIP period for donor retained interests</td>
</tr>
<tr>
<td>§ 29:36</td>
<td>ETIP period—Treatment of spousal interests</td>
</tr>
<tr>
<td>§ 29:37</td>
<td>Exclusions from coverage</td>
</tr>
<tr>
<td>§ 29:38</td>
<td>Protecting grandfathered trusts</td>
</tr>
<tr>
<td>§ 29:39</td>
<td>Additions to a grandfathered trust</td>
</tr>
<tr>
<td>§ 29:40</td>
<td>Constructive addition to grandfathered trust through the release, exercise, or lapse of a power of appointment</td>
</tr>
</tbody>
</table>
§ 29:41 Constructive addition to grandfathered trust through relief of liability
§ 29:42 Predeceased child rule
§ 29:43 No taxable terminations to non-skip persons
§ 29:44 Transfers which qualify for the gift tax exclusion
§ 29:45 Gallo exemptions from tax
§ 29:46 Exemption increases

B. PLANNING TO USE THE GST EXEMPTIONS OF BOTH SPOUSES

§ 29:47 Generally
§ 29:48 Lifetime gifts
§ 29:49 Gifts brought back into the grantor’s estate
§ 29:50 Testamentary planning
§ 29:51 Building up the “GST estate” of the surviving spouse
§ 29:52 The “three-trust” plan
§ 29:53 Reverse QTIP election
§ 29:54 Reformation of a QTIP trust
§ 29:55 Impact of predeceased child rule

C. ALLOCATION OF GST EXEMPTION

§ 29:56 Generally
§ 29:57 Valuation date for transferred property
§ 29:58 Exceptions to valuation rule
§ 29:59 Effective date of allocation of GST exemption
§ 29:60 Timely allocations by donor
§ 29:61 Late allocations by donor
§ 29:62 Timely allocation by personal representative
§ 29:63 Late allocation by personal representative
§ 29:64 Transfers included in donor’s gross estate
§ 29:65 Transfers not included in donor’s gross estate
§ 29:66 Exception for transfers of ETIP property and charitable lead annuity trust interests
§ 29:67 Relief from late elections
§ 29:68 Deemed allocation for lifetime direct skips
§ 29:69 Electing out of the deemed allocation rules during lifetime
§ 29:70 Deemed allocation for lifetime “indirect skip” transfers to trusts
§ 29:71 Deemed allocation at death
§ 29:72 Electing out of the deemed allocation rules at death
§ 29:73 Retroactive allocation
§ 29:74 Application of Chapter 13 to non-resident aliens
D. FORMS
Form 29:75 Self-declaration of trust contemplating GST transfers (three trusts)

CHAPTER 30. CHARITABLE PLANNING

A. STATE LAW CONSIDERATIONS

§ 30:1 Generally
§ 30:2 Limitations on charitable gifts
§ 30:3 Historical limitations on charitable gifts
§ 30:4 Effect of Appropriation rules
§ 30:5 Drafting considerations
§ 30:6 Charitable name
§ 30:7 Charitable use
§ 30:8 Cy pres
§ 30:9 Forms of charitable gifts
§ 30:10 Outright gifts
§ 30:11 Limited use of IRA to make charitable contributions
§ 30:12 Remainders interests
§ 30:13 Split interest trusts
§ 30:14 Private foundations

B. CHARITABLE TAX DEDUCTIONS

§ 30:15 Generally
§ 30:16 Estate tax deduction
§ 30:17 Deductible interest in property
§ 30:18 Undivided portion
§ 30:19 Transferred by the decedent
§ 30:20 Compromise agreements
§ 30:21 Precatory language
§ 30:22 Passing by reason of disclaimers
§ 30:23 Passing by reason of complete termination of a power to consume
§ 30:24 Passing to charities selected by another
§ 30:25 Subject to a condition or power
§ 30:26 Included in the decedent’s estate
§ 30:27 Passing to a qualified charity
§ 30:28 Treatment of administrative expenses
§ 30:29 Cemetery associations
§ 30:30 No political activity
§ 30:31 Gift tax deduction

C. CHARITABLE REMAINDER TRUSTS

§ 30:32 Generally
§ 30:33 Primary use for charitable remainder trust
§ 30:34 Payout requirements for charitable remainder trusts
§ 30:35 Charitable remainder trusts and the spousal right of election
§ 30:36 General Requirements for charitable remainder trusts
§ 30:37 Anti-abuse regulation & valuations
§ 30:38 Lesser of income or unitrust interest
§ 30:39 Lesser of income or unitrust interest with “make up” provision
§ 30:40 Classification of capital gains as income for purposes of the unitrust payout
§ 30:41 FLIP unitrusts are permitted
§ 30:42 Selecting the best payout format
§ 30:43 Concern with inflation
§ 30:44 Desire for certainty as to amount of the payment
§ 30:45 Expected yield of assets in trust
§ 30:46 Impact of payout form on amount of the charitable deduction
§ 30:47 Skewed valuation results
§ 30:48 Importance of the Federal midterm rate
§ 30:49 Whether future additions will be made to the trust
§ 30:50 Whether the trust has specific payout targets
§ 30:51 5% Probability test
§ 30:52 Language to prevent violation of 5% probability test
§ 30:53 Permissible payout recipients
§ 30:54 Persons
§ 30:55 Trusts
§ 30:56 Class of individuals
§ 30:57 Grantor cannot have power over trustee position
§ 30:58 Cancellation of survivor recipient’s interest
§ 30:59 Permissible remainder beneficiaries
§ 30:60 Limiting the remainder recipient to 170(b)(1)(A) charities
§ 30:61 Term of annuity or unitrust interest
§ 30:62 Qualified contingencies
§ 30:63 Final annuity and unitrust payout
§ 30:64 Estate taxes
§ 30:65 Amount includible in grantor’s gross estate
§ 30:66 Excise taxes
§ 30:67 Division of charitable remainder trust
§ 30:68 Unrelated business taxable income
§ 30:69 IRS approved forms for charitable remainder trusts

D. CHARITABLE LEAD TRUSTS
§ 30:70 Charitable lead trusts Generally
TABLE OF CONTENTS

§ 30:71    IRS approved forms for charitable lead trusts
§ 30:72    Regular lead trust
§ 30:73    Payout
§ 30:74    Permissible measuring life
§ 30:75    Excise taxes
§ 30:76    No grantor retained interest
§ 30:77    Primary planning use
§ 30:78    Grantor lead trust
§ 30:79    No yearly income tax deductions
§ 30:80    Recapture amount on death of grantor
§ 30:81    Revocable testamentary charitable lead trust
§ 30:82    Irrevocable inter vivos charitable lead trust
§ 30:83    Tax Cuts and Jobs Act of 2017

E. FORMS

Form 30:84    Precatory request to spouse to make charitable gift
Form 30:85    Example of annuity trust payout provision
Form 30:86    Example of unitrust payout provision
Form 30:87    Reservation of power to cancel the interest of a survivor unitrust recipient
Form 30:88    Excise tax provision

CHAPTER 31. LIFETIME GIFTS

A. ADVANTAGES OF LIFETIME GIFTS

§ 31:1    Non-tax reasons for making lifetime gifts
§ 31:2    Love and affection
§ 31:3    Business continuation planning
§ 31:4    Gift tax credit vs. Estate tax credit
§ 31:5    Tax reasons for making lifetime gifts
§ 31:6    IRS standards for written tax advice
§ 31:7    Exclusions from gifts
§ 31:8    Present interest exclusion
§ 31:9    History of present interest exclusion
§ 31:10   Gifts in trust
§ 31:11   Gifts of tuition and related expense
§ 31:12   Definition of tuition and 529 Plans
§ 31:13   No limit to deductibility
§ 31:14   Gifts of medical expense
§ 31:15   Definition of eligible medical expenses
§ 31:16   Appreciation
§ 31:17   Adjusted taxable gifts
§ 31:18  Leverage
§ 31:19  Gift tax exclusion
§ 31:20  Life insurance policies
§ 31:21  Charitable deduction
§ 31:22  Charitable remainder trust
§ 31:23  Retained interests for a term of years
§ 31:24  Gift taxation of retained income interests
§ 31:25  Minority interest discounts and challenges to use of family limited partnerships and limited liability companies
§ 31:26  Actuarial tables
§ 31:27  Mortality factor
§ 31:28  Regulations limit use of tables
§ 31:29  Interest rate factor
§ 31:30  Current valuation
§ 31:31  Leverage opportunities in low interest rate environment
§ 31:32  Gift tax payments have advantages over estate tax payments
§ 31:33  Estate tax is “tax inclusive”
§ 31:34  Gift tax is “tax exclusive”
§ 31:35  Exception for gifts made within three years of death
§ 31:36  “Net gift” also affected
§ 31:37  Tax savings potential from tax exclusive gifts
§ 31:38  Tax reasons not to make lifetime gifts
§ 31:39  Step-up basis at death
§ 31:40  303 Stock redemptions
§ 31:41  Rule under Section 303
§ 31:42  Limitations of Section 303
§ 31:43  Special use valuation under I.R.C. § 2032A
§ 31:44  6166 extension of time to pay the estate tax

B. PREPARATION OF THE FEDERAL GIFT TAX RETURN

§ 31:45  The federal gift tax
§ 31:46  History of the federal gift tax
§ 31:47  Gifts subject to tax
§ 31:48  Expatriation rules
§ 31:49  Calculation of the gift tax
§ 31:50  Split gifts
§ 31:51  Current rate schedule
§ 31:52  Maximum gift tax rates
§ 31:53  Unified credit
§ 31:54  Valuation of gifts
TABLE OF CONTENTS

§ 31:55 Gifts of remainder interests
§ 31:56 Recapitalization—Gifts
§ 31:57 Gifts of life estate interests
§ 31:58 Penalty for undervaluation
§ 31:59 Limits of penalty
§ 31:60 Filing requirements
§ 31:61 Timely filing
§ 31:62 Penalty for late filing
§ 31:63 Preparer penalties
§ 31:64 State gift tax

C. FORMS

Form 31:65 Form 709
Form 31:66 Instructions for Form 709

CHAPTER 32. IRREVOCABLE LIFETIME TRUSTS

§ 32:1 Lifetime planning

A. INSURANCE TRUSTS

§ 32:2 Life insurance
§ 32:3 Estate tax
§ 32:4 Third-party ownership—Assignment and control
§ 32:5 Ownership—Beneficiary designation
§ 32:6 —Selecting the third party
§ 32:7 Spouse as owner
§ 32:8 Children as owner
§ 32:9 Irrevocable trust as owner
§ 32:10 Insurance trusts
§ 32:11 Trust provides mechanism for paying premiums
§ 32:12 Funding the trust by assigning existing policies
§ 32:13 Sale of policies between trusts
§ 32:14 Policy loans exceeding policy’s basis
§ 32:15 Transfer for value rule
§ 32:16 Gift of policy subject to loan may not fit into exception
§ 32:17 Penalty for violating transfer for value rule
§ 32:18 Trust as owner of new policies
§ 32:19 Source of premium payment
§ 32:20 Payment from income resulting from trust assets
§ 32:21 Payment by insured
§ 32:22 Payment from yearly contributions to trust
§ 32:23 Split dollar arrangement for payment of premiums
§ 32:24 Policy types

B. TRUSTS WITH RETAINED INTERESTS—GRITS, GRATS, GRUTS & QPRTS

§ 32:25 GRITs
§ 32:26 Prior law
§ 32:27 Chapter 14—General rule
§ 32:28 Family members
§ 32:29 Chapter 14—Exclusions and qualified interests
§ 32:30 Allow use of normal valuation rather than zero valuation
§ 32:31 Estate and gift tax consequences of PRTs, QPRTs, GRATs and GRUTs
§ 32:32 GST tax consequences of PRTs, QPRTs, GRATs, and GRUTs
§ 32:33 Amount includible in grantor’s gross estate
§ 32:34 Personal residence trust
§ 32:35 Qualified personal residence trusts
§ 32:36 Personal residence
§ 32:37 Joint QPRTs
§ 32:38 Mortgaged property in QPRTs
§ 32:39 Valuing gift of mortgaged property in QPRT
§ 32:40 No commutation in QPRT
§ 32:41 Payment of taxes, insurance and utilities for residence in QPRT
§ 32:42 Deductibility of property taxes, Florida homestead exemption and “Save Our Homes” Protection for residence in QPRT
§ 32:43 Acceptance of cash to pay expenses for residence in QPRT
§ 32:44 Sale of the residence from QPRT
§ 32:45 Sale to grantor prohibited in QPRT
§ 32:46 Grantor trust status for QPRT
§ 32:47 Reversion interest in QPRT
§ 32:48 Secondary reasons for including a reversion interest in QPRT
§ 32:49 Retention of qualified proceeds in QPRT
§ 32:50 Payment of income and principal from QPRT
§ 32:51 Conversion to a qualified annuity interest for QPRT
§ 32:52 Qualified annuity interest from QPRT
§ 32:53 Calculating the gift tax value of transfer to QPRT

C. GIFT TRUSTS

§ 32:54 Gift trusts generally
§ 32:55 Trusts for the benefit of minors
§ 32:56 Conversion of Uniform Transfer to Minors Act account to a trust
§ 32:57 Trusts that pay all of the income to the trust beneficiary
§ 32:58 Trusts with annual withdrawal rights
§ 32:59 Crummey power
§ 32:60 Derivation of term “Crummey power”
§ 32:61 Crummey notice
§ 32:62 Time to exercise power
§ 32:63 Minor donees
§ 32:64 Give Crummey notice to minor child
§ 32:65 Donees who are not current trust beneficiaries
§ 32:66 Crummey power of grandchild qualifies
§ 32:67 Assets must be available for notice to be effective
§ 32:68 Record keeping
§ 32:69 Income tax consequences of Crummey powers
§ 32:70 Failure to exercise Crummey power
§ 32:71 General power of appointment
§ 32:72 Limited power of appointment
§ 32:73 Hanging power
§ 32:74 Multiple trusts
§ 32:75 Dispositive provisions
§ 32:76 Backup marital deduction provision
§ 32:77 Segregate power of appointment amounts from marital trust
§ 32:78 Pour over to other trusts
§ 32:79 Reciprocal trust doctrine
§ 32:80 GST considerations

D. FUNDING IRREVOCABLE TRUSTS
§ 32:81 Considerations in funding irrevocable trusts
§ 32:82 Irrevocable gift trusts
§ 32:83 Two-year rule
§ 32:84 Capital gains tax
§ 32:85 QPRTs
§ 32:86 Insurance trust

E. FORMS
Form 32:87 Life insurance trust with hanging powers (one life)
Form 32:88 Explanation of life insurance trust (one life)
Form 32:89 Crummey notice
Form 32:90 IRS Sample QPRT
Form 32:91   QPRT mortgage clause
Form 32:92   Gift trust for minor grandchild under I.R.C. 2503(c)

Table of Laws and Rules
Table of Cases
Index