

# Table of Contents

## Volume 17

### **CHAPTER 1. THE ESTATE PLANNING PROCESS**

- § 1:1 What an estate plan is
- § 1:2 The science of estate planning
- § 1:3 The art of estate planning
- § 1:4 The objectives of a good estate plan
- § 1:5 How estates are planned

### **CHAPTER 2. THE ESTATE PLANNING ADVISORS**

- § 2:1 The estate planning advisors, generally
- § 2:2 The lawyer as an estate planning advisor
- § 2:3 The accountant as an estate planning advisor
- § 2:4 The insurance agent as an estate planning advisor
- § 2:5 The staffs of financial institutions as estate planning advisors
- § 2:6 *[Reserved]*
- § 2:7 The investment counselor as an estate planning advisor
- § 2:8 Other expert assistance
- § 2:9 The charlatan estate planning advisor
- § 2:10 The internet as a source of investment advice
- § 2:11 Other sources of information
- § 2:12 Confidential communications to advisors

### **CHAPTER 3. THE LAWYER'S SERVICES IN ESTATE PLANNING**

- § 3:1 The illegal practice of law
- § 3:2 Advertising by the lawyer
- § 3:3 Soliciting law business
- § 3:4 Champerty, maintenance and barratry
- § 3:5 Fiduciary relationships
- § 3:6 Conflicts of interest
- § 3:7 Privileged communications to lawyers
- § 3:8 Requirements of privileged communications
- § 3:9 Obstructions in the path of the advisor

- § 3:10 The attorney's charges for estate planning
- § 3:11 The deductibility of attorney's fees for estate planning
- § 3:12 The lawyer as a witness
- § 3:13 Bequests and devises to the attorney
- § 3:14 Gifts by client to the attorney
- § 3:15 Business relations between lawyer and client
- § 3:16 Selling the lawyer's practice
- § 3:17 Actions for legal malpractice
- § 3:18 Limitation of actions against attorneys for malpractice

## **CHAPTER 4. THE SERVICES OF FINANCIAL INSTITUTIONS**

- § 4:1 The services of financial institutions
- § 4:2 The bank as executor, guardian or trustee
- § 4:3 Custodial accounts
- § 4:4 The escrow agreement
- § 4:5 Bank common trust funds

## **CHAPTER 5. THE LAWYER'S DUTIES AND PROBATE PROCEEDINGS IN ESTATE PLANNING**

- § 5:1 The advisor's duties in general
- § 5:2 The duty to get and keep professional competence
- § 5:3 The ways to get and keep professional competence
- § 5:4 The duty to understand the roles of the other advisors
- § 5:5 The duty of honesty toward the client
- § 5:6 The duty of loyalty to the client
- § 5:7 The duty to know and understand the client

## **CHAPTER 6. EFFECTIVE ESTATE PLANNING**

- § 6:1 Establish a sound relationship with estate planning clients
- § 6:2 Be proactive, not reactive, in making estate plan
- § 6:3 Help you clients establish their estate planning objectives
- § 6:4 Establish long term, as well as short term, goals
- § 6:5 Help your clients understand the difference between probate and nonprobate assets
- § 6:6 Help your clients make a "benefit allocation"
- § 6:7 Help your clients understand the benefits and pitfalls of "avoiding probate"
- § 6:8 Keep the plan simple

## TABLE OF CONTENTS

- § 6:9 Keep the plan comfortable
- § 6:10 Keep the plan flexible
- § 6:11 Make the plan farsighted
- § 6:12 Place human values over money
- § 6:13 Provide sufficient liquidity
- § 6:14 Checklist: Ways to build estate liquidity
- § 6:15 Checklist: Estate planning tools that reduce the need for liquid investments
- § 6:16 Avoid imposing your personal agenda on clients
- § 6:17 Exercise careful draftsmanship
- § 6:18 Checklist: General rules for drafting clear, understandable legal documents
- § 6:19 Checklist: Suggestions for the use of form books and forms on disks
- § 6:20 Coordinate the plans of various members of the family
- § 6:21 Review the plan regularly and carefully

## **CHAPTER 7. THE WELL-BALANCED ESTATE PLAN**

- § 7:1 The elements of a good estate plan
- § 7:2 Determining and defining the objectives of the plan
- § 7:3 Checklist: Questions for the client to answer in making the plan
- § 7:4 The years immediately before and after retirement
- § 7:5 Planning the estate distribution
- § 7:6 Providing for claims and other emergencies
- § 7:7 The concept of “estate assets”
- § 7:8 Checklist: Kinds of nonprobate assets
- § 7:9 Checklist: Advantages of using nonprobate forms of assets
- § 7:10 Checklist: Nonprobate assets not included in the federal gross estate
- § 7:11 Checklist: Problems created by using nonprobate assets
- § 7:12 The best test of a sound estate plan
- § 7:13 The inheritability of property
- § 7:14 The safekeeping of estate assets

## **CHAPTER 8. GATHERING AND ANALYZING THE INFORMATION**

- § 8:1 Gathering information about the estate, generally
- § 8:2 Problems in gathering information
- § 8:3 Checklist: The information that is needed
- § 8:4 Completing the information sheet

- § 8:5 Analyzing the information
- § 8:6 Checklist: Possible actions to be taken
- § 8:7 Designating and changing beneficiaries

## **CHAPTER 9. PROBLEMS IN PROJECTING THE PLAN TO DEATH AND BEYOND**

- § 9:1 Problems in predicting the future's impact
- § 9:2 Trends that may have an impact on the plan
- § 9:3 Factors likely to increase the estate
- § 9:4 Factors that may decrease the estate
- § 9:5 Factors that may call for some redistribution of the estate
- § 9:6 Checklist: Changes within the plan that may change the estate distribution
- § 9:7 Checklist: Outside factors which may call for a change in estate distribution

## **CHAPTER 10. GENERATION SKIPPING**

- § 10:1 The nature of generation skipping
- § 10:2 Checklist: Advantages of generation skipping (disregarding the generation skipping transfer tax)
- § 10:3 The generation skipping transfer tax
- § 10:4 Minimizing or avoiding the generation skipping tax

## **CHAPTER 11. DOMICILE AND THE CONFLICT OF LAWS**

- § 11:1 Problems arising where more than one state is involved
- § 11:2 The conflict of laws, generally
- § 11:3 The law governing wills
- § 11:4 The conflict of laws and real estate
- § 11:5 The conflict of laws and personal property
- § 11:6 The domicile of the testator
- § 11:7 Factors in determining domicile
- § 11:8 Checklist: Steps to take to establish domicile with certainty
- § 11:9 Change of domicile after executing the will
- § 11:10 Checklist: The law governing various aspects of estates and trusts

## **CHAPTER 12. PLANNING FOR SPECIAL SITUATIONS AND PROBLEMS**

- § 12:1 Planning for the client's special problems and situations

## TABLE OF CONTENTS

- § 12:2 Couples with young children
- § 12:3 Couples without children
- § 12:4 Older couples with adult children
- § 12:5 Owner of small business with wife and children
- § 12:6 Principal owner of successful corporation with wife and adult children
- § 12:7 Single person with moderately large estate
- § 12:8 Estate planning for veterans
- § 12:9 Checklist: Veterans' benefits—Federal
- § 12:10 —State
- § 12:10.50 Rules of veterans' homes for Illinois veterans
- § 12:11 Estate planning for government employees
- § 12:12 Government pension plans
- § 12:13 Taxation of military payments

## **CHAPTER 13. SPECIAL PROBLEMS IN SMALL AND MODERATE ESTATES**

- § 13:1 Special estate planning problems based on size of estate
- § 13:2 Special problems small insolvent estates
- § 13:3 Special problems in combined, solvent estates under \$100,000
- § 13:4 Special problems in combined estates between \$500,000 and \$1,000,000

## **CHAPTER 14. ESTATE PLANNING TO MINIMIZE OR AVOID ESTATE TAXES**

- § 14:1 Planning large estates to minimize or avoid federal estate taxes
- § 14:2 Coordinating several large estates in the same family
- § 14:3 Use of gifts by the wealthy
- § 14:4 Use of trusts by the wealthy
- § 14:5 The use of powers in the large estate
- § 14:6 Use of disclaimers
- § 14:7 Determining a client's vulnerability to estate taxes for years before 2011
- § 14:8 Sound estate planning for larger estates under the revenue act of 2001

## **CHAPTER 15. ESTATE PLANNING FOR THE HANDICAPPED AND DISABLED ADULTS**

- § 15:1 The handicapped, generally

- § 15:2 The importance of, and procedures for, planning for disabled people
- § 15:3 Planning for the blind or deaf
- § 15:4 Planning for the physically handicapped
- § 15:5 Planning for the miser
- § 15:6 Planning for the alcoholic or spendthrift
- § 15:7 Planning for the convict
- § 15:8 Planning for the mentally ill
- § 15:9 Planning for the mentally disabled
- § 15:10 Care for the mentally retarded and the developmentally disabled

## **CHAPTER 16. ESTATE PLANNING FOR THE EXECUTIVE AND PROFESSIONAL PERSON**

- § 16:1 Estate planning for executives and professional people, generally
- § 16:2 Estate planning for the executive
- § 16:3 Estate planning for the doctor or dentist
- § 16:4 Estate planning for the lawyer
- § 16:5 Estate planning for other professional people
- § 16:6 Estate planning for the entrepreneur
- § 16:7 Estate planning for the suddenly wealthy

## **CHAPTER 17. ESTATE PLANNING FOR THE FARMER**

- § 17:1 Special farm problems, in general
- § 17:2 The father-son partnership
- § 17:3 The right to purchase the farm
- § 17:4 Power of executor to continue farm operation
- § 17:5 The incorporated farm
- § 17:6 Checklist: Advantages of incorporating the family farm
- § 17:7 Disposing of the farm in the will
- § 17:8 Insurance for the farm
- § 17:9 The retired farmer
- § 17:10 The farm employee
- § 17:11 Rights of tenant's estate upon his death
- § 17:12 Rights of tenant upon owner's death

## **CHAPTER 18. ESTATE PLANNING FOR WOMEN**

- § 18:1 Special problems in women's estates, generally

## TABLE OF CONTENTS

- § 18:2 Estate planning problems of single women
- § 18:3 Estate planning problems of the divorcee
- § 18:4 Estate planning problems of the widow

## **CHAPTER 19. POST MORTEM ESTATE PLANNING**

- § 19:1 The need for post mortem estate planning
- § 19:2 Planning immediately after a death
- § 19:3 Post mortem estate planning by the executor or administrator
- § 19:4 Post mortem estate planning by the surviving spouse
- § 19:5 Post mortem estate planning in behalf of minor dependents
- § 19:6 Post mortem estate planning by adult beneficiaries
- § 19:7 Alerting clients to the need for careful post mortem estate planning

## **CHAPTER 20. *[Reserved]***

## **CHAPTER 21. *[Reserved]***

## **CHAPTER 22. *[Reserved]***

## **CHAPTER 23. THE CLIENT**

- § 23:1 The client
- § 23:2 The client's name
- § 23:3 The client's age
- § 23:4 The client's physical condition
- § 23:5 The client's mental condition
- § 23:6 The client's personality
- § 23:7 The client's objectives and ambitions

## **CHAPTER 24. THE CLIENT'S PROBABLE HEIRSHIP**

- § 24:1 The client's probable heirship
- § 24:2 Establishing the probable heirship
- § 24:3 The affidavit of heirship
- § 24:4 Proceedings to perpetuate testimony as to heirship

## **CHAPTER 25. THE CLIENT'S SPOUSE**

- § 25:1 The importance of the marriage
- § 25:2 Checklist: The impact of marriage on the plan

- § 25:3 The spouse, in general
- § 25:4 The rights of the spouse
- § 25:5 The Family Expense Act
- § 25:6 Property rights of married persons
- § 25:7 Liability for debts of spouse or torts committed by spouse
- § 25:8 Preparing a spouse to be a widow(er)
- § 25:9 Checklist: Ways to prepare a spouse to be a widow(er)
- § 25:10 Checklist: Special problems caused by remarriage of divorced or widowed person
- § 25:11 Ethical problems of the lawyer in representing a married couple

## **CHAPTER 26. THE VALID MARRIAGE**

- § 26:1 Legal requirements of a valid marriage
- § 26:2 The rights of a putative spouse
- § 26:3 The marriage license
- § 26:4 Religious Freedom and Marriage Fairness Act
- § 26:5 Solemnization of the marriage
- § 26:6 Registration of the marriage
- § 26:7 Age requirements
- § 26:8 Mental capacity
- § 26:9 Physical capacity
- § 26:10 Incest
- § 26:11 Miscegenation
- § 26:12 Prior marriage (bigamy)
- § 26:13 Uniform marriage evasion act
- § 26:14 Proof of marriage
- § 26:15 Presumptions and burden of proof
- § 26:16 Checklist: Presumptions about marriage
- § 26:17 Void and voidable marriages
- § 26:18 *[Deleted]*

## **CHAPTER 26A. CIVIL UNIONS**

- § 26A:1 Title of Act and purposes of Act
- § 26A:2 Definitions used in Act
- § 26A:3 Limitations on actions pursuant to Act
- § 26A:4 Prohibited civil unions
- § 26A:5 The applications, license, and certification for a civil union
- § 26A:6 The duties of the county clerk
- § 26A:7 The certification of a civil union
- § 26A:8 The dissolution or declaration of the invalidity of a civil union
- § 26A:9 The application of the Civil Practice Law to civil unions



## TABLE OF CONTENTS

- § 26A:10 The venue of civil law proceedings
- § 26A:11 The reciprocity of civil unions entered into in other states
- § 26A:12 Voluntary conversion of civil union to marriage

## **CHAPTER 27. SEPARATION AND ANNULMENT, AND SEPARATION AGREEMENTS**

- § 27:1 Matrimonial problems, in general
- § 27:2 Avoiding the impact of matrimonial problems
- § 27:3 Legal separation (separate maintenance)
- § 27:4 Separation agreements
- § 27:5 Construction of separation agreements and dissolution agreements
- § 27:6 Determining the validity of a postnuptial agreement
- § 27:7 Declaration of invalidity of marriage (annulment)

## **CHAPTER 28. DISSOLUTION OF MARRIAGE (DIVORCE)**

### **A. DISSOLUTION OF MARRIAGE, GENERALLY**

- § 28:1 The problems of dissolution of marriage (divorce), generally
- § 28:2 Grounds for dissolution of marriage (divorce)
- § 28:3 Grounds for dissolution of marriage
- § 28:4 *[Reserved]*
- § 28:5 Defenses to action for dissolution of marriage
- § 28:6 Procedure in dissolution of marriage cases
- § 28:6.50 Attorney's fees in dissolution actions

### **B. SPOUSAL SUPPORT PAYMENTS**

- § 28:7 Payments for support of spouse
- § 28:8 Checklist: Factors considered in fixing support payments
- § 28:9 Termination of spousal maintenance upon death, remarriage, or resident, continuous, conjugal cohabitation
- § 28:10 Modification of spousal support payments
- § 28:10.50 The Non-Support Punishment Act
- § 28:11 Piercing the ownership veil to collect support
- § 28:12 Right of surviving spouse or child to life insurance proceeds

## **C. THE DIVISION OF PROPERTY—MARITAL PROPERTY**

- § 28:13 Disposition of property between the spouses
- § 28:14 The division of marital property
- § 28:15 Qualified domestic relations orders
- § 28:16 The definition of marital and non-marital property
- § 28:17 The presumption as to marital property
- § 28:18 Rebutting the presumption as to marital property
- § 28:19 Treatment of business and professional interests (goodwill)
- § 28:20 Gifts and inheritances received by either spouse
- § 28:21 Treatment of government benefits
- § 28:21.50 Treatment of pensions granted under the Illinois Pension Code—Qualified Domestic Relations Orders (QILDRO)
- § 28:22 Treatment of pensions and other employment benefits
- § 28:23 Treatment of future social security benefits
- § 28:24 Award of exclusive possession of marital residence
- § 28:25 The transmutation of property from nonmarital to marital property
- § 28:26 Valuation of distributed property
- § 28:27 Dissipation of marital assets
- § 28:28 Transfers in violation of the automatic stay provisions of the marriage act
- § 28:28.50 Postmarital agreements for distribution of couple's property
- § 28:28.70 Marital settlement agreements

## **D. JOINT SIMPLIFIED DISSOLUTION**

- § 28:29 Joint simplified dissolution procedures

## **E. THE IMPACT OF THE DIVORCE**

- § 28:30 Estate planning for the divorced person
- § 28:31 Effect of death on dissolution proceedings

## **CHAPTER 29. OTHER MATRIMONIAL PROBLEMS**

- § 29:1 Special legal problems of marriage
- § 29:2 The agreement to marry
- § 29:3 Breach of promise to marry
- § 29:4 Gifts in contemplation of marriage
- § 29:5 The antenuptial agreement
- § 29:6 Requirements of a valid antenuptial agreement

## TABLE OF CONTENTS

- § 29:7 The Illinois Uniform Premarital Agreement Act
- § 29:8 Construction of antenuptial agreements
- § 29:9 Actions to set aside antenuptial agreements
- § 29:10 The fiduciary obligations owed by one spouse to the other
- § 29:11 Relatives as third party beneficiaries of antenuptial agreements
- § 29:12 Common law marriages
- § 29:13 Rights of the unmarried “spouse”
- § 29:14 Alienation of affections
- § 29:15 Criminal conversation
- § 29:16 The former spouse
- § 29:17 The void or voidable divorce decree

## **CHAPTER 29A. THE UNIFORM INTERSTATE FAMILY SUPPORT ACT**

- § 29A:1 The Uniform Interstate Family Support Act
- § 29A:2 The bases for jurisdiction over nonresidents
- § 29A:3 The modification of child-support order of another state
- § 29A:4 Jurisdiction to modify child-support order of foreign country or political subdivision

## **CHAPTER 30. THE CLIENT’S DESCENDANTS**

- § 30:1 The client’s children
- § 30:2 The ages of children
- § 30:3 Children’s names
- § 30:4 Determining child’s name in contested proceeding
- § 30:5 Civil rights and obligations of children
- § 30:6 The parent-child immunity doctrine
- § 30:7 Criminal responsibility of children
- § 30:8 Parents’ responsibility for children’s wrongful acts
- § 30:9 Litigation in behalf of a minor
- § 30:10 Property ownership by minors
- § 30:11 The emancipation of minor children
- § 30:12 Children by a former spouse
- § 30:13 Legal consequences of artificial insemination
- § 30:14 Surrogate parenting agreements
- § 30:15 The client’s grandchildren and great-grandchildren
- § 30:16 Judicial control of relationships between parent and adult child

## **CHAPTER 31. THE CARE AND SUPPORT OF CHILDREN**

### **A. THE DUTY TO CARE FOR AND SUPPORT CHILDREN**

- § 31:1 The rights of children to care and support
- § 31:2 The duty to provide the care and support of minors and disabled adults
- § 31:3 Child support in dissolution of marriage, legal separation, and declaration of invalidity
- § 31:4 The duty to support children removed from parents' custody
- § 31:5 Possible sources of support for minor children
- § 31:6 Will, trust, and other provisions for minor children

### **B. JUDICIALLY COMPELLED CARE AND SUPPORT OF CHILDREN**

- § 31:7 Authority of judge to protect interests of children
- § 31:8 Education expenses for children of divorced parents
- § 31:9 Support and educational expenses for adult children
- § 31:10 Judicially compelled trust for children of divorced parents
- § 31:11 Judicially compelled life insurance for benefit of children
- § 31:12 Modification of child support provisions
- § 31:12.50 Contempt of court for failure to pay child support

### **C. MEDICAL TREATMENT FOR MINORS**

- § 31:13 The medical treatment of minors, generally
- § 31:14 Consenting to medical treatment for minors
- § 31:15 Judicially compelled medical treatment
- § 31:16 The doctrine of substituted judgment

## **CHAPTER 31A. THE ILLINOIS UNIFORM TRANSFERS TO MINORS ACT**

- § 31A:1 Short title and definitions
- § 31A:2 Scope and jurisdiction
- § 31A:3 Nomination of custodian
- § 31A:4 Transfer by gift or exercise of power of appointment
- § 31A:5 Authorized transfers

## TABLE OF CONTENTS

- § 31A:6 Other transfer by fiduciary
- § 31A:7 Transfer by other obligor
- § 31A:8 Validity and effect of transfer
- § 31A:9 Care of custodial property
- § 31A:10 Powers of custodian and use of custodial property

## **CHAPTER 32. THE CUSTODY OF MINOR CHILDREN**

### **A. THE RIGHT TO CUSTODY OF CHILDREN**

- § 32:1 The custody of minor children, generally
- § 32:2 The testamentary guardian
- § 32:3 Grandparents' right to custody

### **B. THE JUDICIAL DETERMINATION OF CUSTODY OF CHILDREN**

- § 32:4 Child custody proceedings
- § 32:5 The best interest of the child
- § 32:6 List: Factors considered in determining best interests of child
- § 32:6.50 Modification of custody agreement
- § 32:7 Proceedings by person other than parents to obtain custody
- § 32:8 Standing required to seek custody of child
- § 32:9 Custody disputes in adoption proceedings
- § 32:9.50 Use of expert witnesses in proceedings relating to custody of children

### **C. MULTI-JURISDICTIONAL PROBLEMS IN CHILD-CUSTODY CASES**

- § 32:10 The Uniform Child-Custody Jurisdiction Act
- § 32:10.50 Hague Convention on Civil Aspects of International Child Abduction
- § 32:11 Removal of child from Illinois

### **D. WRONGFUL DEPRIVATION OF CUSTODY**

- § 32:12 Kidnapping or abduction of minors

### **E. GOVERNMENTAL CONTROL OF CHILD CUSTODY**

- § 32:13 Dependency proceedings
- § 32:14 Delinquency proceedings

## **F. VISITATION RIGHTS**

- § 32:15 Visitation rights of non-custodial parent,  
grandparents, and others

## **CHAPTER 32A. THE CUSTODY OF FROZEN EMBRYOS**

- § 32A:1 Factors to be considered regarding custody of frozen embryos  
§ 32A:2 Balancing and other common law approaches in resolving  
frozen embryo disputes

## **CHAPTER 33. LEGAL PROBLEMS CREATED BY ADOPTION**

- § 33:1 The problems of adoption in estate planning  
§ 33:2 Collateral attack on adoption  
§ 33:3 Who may be adopted  
§ 33:4 Rights and obligations of natural parent after order  
terminating parental rights or after adoption  
§ 33:5 Inheriting by adopted persons from adoptive parents  
§ 33:6 Inheriting by adopted persons from natural parents  
§ 33:7 Inheriting by adopted child from former adoptive  
parents  
§ 33:8 Share of adopted child inheriting from own and  
adopting parent's blood relatives  
§ 33:9 Inheriting by adopting parent from adopted child  
§ 33:10 Inheriting by adopted persons who was adult when  
adopted  
§ 33:11 Will provisions for adopted persons in the family  
§ 33:12 The contract to adopt—equitable adoption  
§ 33:13 Opening adoption records  
§ 33:14 The income tax credit for qualifying adoption  
expenses  
§ 33:15 The Illinois Adoption and Medical Information Act  
§ 33:16 Relieving parents of parental responsibilities to adopted child  
§ 33:17 The consent to an adoption

## **CHAPTER 34. CHILDREN BORN OUT OF WEDLOCK (PREVIOUSLY KNOWN AS “ILLEGITIMATES”)**

### **A. LEGAL ISSUES CONCERNING PARENTAGE**

- § 34:1 Legal issues concerning parentage, generally  
§ 34:2 The rights of children born out of wedlock

## TABLE OF CONTENTS

- § 34:3 The rights of parents of children born out of wedlock
- § 34:4 Inheriting by or through children born out of wedlock
- § 34:5 Inheriting from or through children born out of wedlock
- § 34:6 Liability for support of born out of wedlock child
- § 34:7 Custody of born out of wedlock child
- § 34:8 Will and other provisions for a child born out of wedlock

## **B. ESTABLISHING PARENTAGE**

- § 34:9 Actions acknowledging parentage
- § 34:10 Presumptions of parentage
- § 34:11 The voluntary acknowledgment of paternity
- § 34:12 Establishment of parent and child relationship by consent of the parties
- § 34:13 Parentage of child born of artificial insemination
- § 34:14 Parentage of child born to surrogate
- § 34:15 The Putative Father Registry

## **C. PROCEEDINGS TO LEGALLY ESTABLISH THE PARENT-CHILD RELATIONSHIP**

- § 34:16 The law applicable in disputed paternity proceedings
- § 34:17 Appeal and review
- § 34:18 *[Reserved]*

## **CHAPTER 35. THE OTHER OBJECTS OF THE CLIENT'S BOUNTY**

- § 35:1 The daughter-in-law
- § 35:2 The childless couple
- § 35:3 Other relatives
- § 35:4 The spouse's relatives
- § 35:5 The church
- § 35:6 Favorite charities
- § 35:7 Other special interests

## **CHAPTER 36. THE COMMON OWNERSHIP OF PROPERTY**

- § 36:1 The common ownership of property, generally
- § 36:2 Checklist: The ways property may be owned or shared by more than one person
- § 36:3 The tenancy in common
- § 36:4 Using the tenancy in common
- § 36:5 The rights and obligations of a tenant in common

- § 36:6 Establishing the rights of the tenants in the property
- § 36:7 Time shares

## **CHAPTER 37. JOINT TENANCIES AND TENANCIES BY THE ENTIRETIES**

- § 37:1 The nature of joint tenancies
- § 37:2 When and how to use joint tenancy ownership
- § 37:3 Checklist: Advantages of joint tenancy ownership
- § 37:4 Checklist: Disadvantages of joint tenancy ownership
- § 37:5 Creating the joint tenancy
- § 37:6 The rights of joint tenants among themselves
- § 37:7 Severing the joint tenancy
- § 37:8 Severance of joint tenancy upon separation or dissolution of marriage
- § 37:9 Checklist: Acts that destroy the joint tenancy
- § 37:10 Breaking up unwanted joint tenancies
- § 37:11 Checklist: Steps to take in breaking up a joint tenancy
- § 37:12 The joint tenancy and the resulting trust
- § 37:13 The joint tenancy and the income tax
- § 37:14 The joint tenancy and the gift tax
- § 37:15 The joint tenancy and the Illinois Estate Tax
- § 37:16 The joint tenancy and the federal estate tax
- § 37:17 The tenancy by the entireties

## **CHAPTER 38. PAYABLE ON DEATH ACCOUNTS**

- § 38:1 The nature of the payable on death account
- § 38:2 Making optimum use of payable on death accounts
- § 38:3 Checklist: Advantages of the payable on death account
- § 38:4 Using the payable on death account
- § 38:5 The Illinois Trust and Payable on Death Accounts Act
- § 38:6 Burden on payable on death accounts for estate obligations
- § 38:7 The payable on death account and federal estate taxes
- § 38:8 Rights of beneficiary who predeceases the settlor
- § 38:9 Termination or revocation of the payable on death account
- § 38:10 Transfer on Death (TOD) registration of securities

## **CHAPTER 39. LIFE ESTATES**

- § 39:1 The nature of the life estate



## TABLE OF CONTENTS

|         |  |
|---------|--|
| § 39:2  | Creating the life estate   |
| § 39:3  | The life estate subject to a condition   |
| § 39:4  | The Rule in Shelley's Case   |
| § 39:5  | Checklist: Advantages of the life estate   |
| § 39:6  | Checklist: Disadvantages of the life estate  |
| § 39:7  | Checklist: The rights normally enjoyed by the life tenant                            |
| § 39:8  | The usual obligations and duties of the life tenant                                  |
| § 39:9  | The right of a life tenant to consume or otherwise dispose of the principal          |
| § 39:10 | Right of life tenant to rent from agricultural operations if life tenancy terminates |
| § 39:11 | Waste  |
| § 39:12 | Terminating the life estate  |
| § 39:13 | The life estate and the Principal and Income Act                                     |
| § 39:14 | The valuation of life estates for tax purposes                                       |
| § 39:15 | Judicial sale of life estate and remainder   |
| § 39:16 | The rights of the tenant pur autrie vie  |
| § 39:17 | The life estate qualified for the marital deduction                                  |

## **CHAPTER 39A. REAL PROPERTY TRANSFER ON DEATH INSTRUMENT ACT**

|            |  |
|------------|--|
| § 39A:1    | Short title and definitions  |
| § 39A:2    | Applicability and general provisions                                 |
| § 39A:2.50 | Trust as beneficiary   |
| § 39A:3    | Requirements   |
| § 39A:4    | Formalities  |
| § 39A:5    | Revocation   |
| § 39A:6    | Effect of transfer on death instrument during owner's life           |
| § 39A:7    | Effect of transfer on death instrument at owner's death              |
| § 39A:8    | Joint owners   |
| § 39A:9    | Notice of death affidavit, acceptance and effective date of transfer |
| § 39A:10   | Disclaimer, rights of creditors and limitations                      |

## **CHAPTER 40. FUTURE INTERESTS IN PROPERTY**

|        |   |
|--------|---|
| § 40:1 | Future interests in property                                    |
| § 40:2 | Checklist: Definitions relating to future interests in property |
| § 40:3 | The base or determinable fee                                    |
| § 40:4 | Reversions  |

- § 40:5 Estates on condition
- § 40:6 The possibility of reverter
- § 40:7 The right of reentry
- § 40:8 Remainder interests
- § 40:9 Cross remainders
- § 40:10 Vested remainders
- § 40:11 Contingent remainders
- § 40:12 Rules for determining the character of remainder interest
- § 40:13 Executory interests
- § 40:14 Possibility of issue extinct

## **CHAPTER 41. POWERS OF APPOINTMENT**

- § 41:1 The nature of the power of appointment
- § 41:1.30 Application of Uniform Powers of Appointment Law
- § 41:1.50 Creation of power of appointment; extent of authority conferred
- § 41:2 Testamentary powers of appointment
- § 41:3 Non-testamentary powers of appointment
- § 41:4 Advantages and disadvantages of the power of appointment
- § 41:5 The tax implications of the power of appointment
- § 41:6 The special, exclusive, testamentary power of appointment
- § 41:7 The exercise of the power of appointment
- § 41:7.50 Powerholder's authority to revoke or amend exercise
- § 41:7.60 Power to contract
- § 41:7.70 Creditors' claims
- § 41:8 Release of a power
- § 41:9 The disclaimer of the power of appointment
- § 41:10 Disposition of trust property subject to power
- § 41:11 Disposition of ineffectively appointed property under general power; capture doctrine
- § 41:12 Disposition of unappointed property

## **CHAPTER 42. CONTRACTS, AGREEMENTS AND CONVEYANCES**

- § 42:1 Contracts, agreements and conveyances, generally
- § 42:2 Oral agreements—Dead Man's Act
- § 42:3 —Statute of frauds
- § 42:4 Agreement to will property
- § 42:5 Agreement not to make or revoke a will
- § 42:6 Specific performance of contract to convey real estate
- § 42:7 Options to buy personal property

TABLE OF CONTENTS

**CHAPTER 43. THE CLIENT'S  
INVESTMENT PROGRAM**

**A. HELPING CLIENTS ORGANIZE THEIR  
INVESTMENT PROGRAMS**

- § 43:1 The function of the lawyer in advising clients about investments
- § 43:2 Basic approaches to investments
- § 43:3 Checklist: Ways to delegate part or all the work and responsibility of investing
- § 43:4 Checklist: Rules for avoiding unsafe investments

**B. GETTING INVESTMENT INFORMATION**

- § 43:5 Sources of investment information
- § 43:6 The selection and use of a stockbroker
- § 43:7 Using investment counseling
- § 43:8 Using the computer and Internet for investing

**C. AVOIDING RISKY INVESTMENTS**

- § 43:9 Honest investments with no chance of success
- § 43:10 The surviving spouse's new business
- § 43:11 The businessman's risk
- § 43:12 Checklist: Necessary factors for success of a businessman's risk

**D. AVOIDING FRAUDS**

- § 43:13 Consumer fraud
- § 43:14 The con man
- § 43:15 Checklist: Common forms of confidence games

**CHAPTER 44. CASH, SAVINGS AND  
GOVERNMENT BONDS**

- § 44:1 Cash on hand
- § 44:2 Checking and savings accounts
- § 44:3 Rules determining amount of insurance coverage for savings accounts
- § 44:4 Accounts and notes receivable
- § 44:5 Treasury bills and notes
- § 44:6 U.S. government bonds
- § 44:7 Tax-exempt government obligations

## **CHAPTER 45. CORPORATE STOCKS AND BONDS**

- § 45:1 Problems relating to corporate securities, generally
- § 45:2 Common stocks
- § 45:3 The advantages and disadvantages of corporate common stocks
- § 45:4 Terminology used in connection with common stocks
- § 45:5 Investing in unlisted securities
- § 45:6 Over-the-counter trading
- § 45:7 Stocks listed on the exchanges
- § 45:8 Preferred stocks
- § 45:9 Corporate bonds

## **CHAPTER 46. MUTUAL FUNDS**

- § 46:1 Mutual funds
- § 46:2 Checklist: Advantages of mutual funds
- § 46:3 Checklist: Disadvantages of mutual funds
- § 46:4 Mutual municipal funds

## **CHAPTER 47. REAL ESTATE IN THE PLAN**

- § 47:1 The place of real estate in the plan
- § 47:2 The real estate lease
- § 47:3 The installment contract for deed
- § 47:4 Below-market loans and foregone interest
- § 47:5 *[Reserved]*
- § 47:6 Options to buy or sell real estate
- § 47:7 The real estate mortgage
- § 47:8 *[Reserved]*
- § 47:9 The sale and leaseback
- § 47:10 Real estate in a foreign state
- § 47:11 Real estate in a foreign country

## **CHAPTER 48. HOLDING AND CONVEYING TITLE TO REAL ESTATE**

- § 48:1 Rights in real estate, generally
- § 48:2 How title to real estate is held
- § 48:3 How title to real estate is sold
- § 48:4 How title to real estate is transferred
- § 48:5 The consideration for a deed
- § 48:6 The acknowledgment of a deed
- § 48:7 The Illinois real estate transfer tax
- § 48:8 The delivery of a deed
- § 48:9 The acceptance of the deed

## TABLE OF CONTENTS

- § 48:10 Mental capacity required to make a valid conveyance
- § 48:11 Protecting investments in real estate
- § 48:12 The merchantability of title to real estate
- § 48:13 Incorporating real estate
- § 48:14 The deed construed to be a mortgage
- § 48:15 Gaining and losing title by adverse possession
- § 48:16 The construction of deeds

## **CHAPTER 49. PARTITION, FORECLOSURE, AND EMINENT DOMAIN**

- § 49:1 Partition of real estate
- § 49:2 Foreclosure of real estate mortgages
- § 49:3 Condemnation of real estate

## **CHAPTER 49A. UNIFORM PARTITION OF HEIRS PROPERTY ACT**

- § 49A:1 Partition of “heirs property”
- § 49A:2 Relationship to Code of Civil Procedure
- § 49A:3 Service; posting
- § 49A:4 Commissioners
- § 49A:5 Determination of value
- § 49A:6 Cotenant buyout
- § 49A:7 Partition alternatives
- § 49A:8 Consideration for partition in kind
- § 49A:9 Open-market sale, sealed bids, or auction
- § 49A:10 Report of open-market sale
- § 49A:11 Costs

## **CHAPTER 50. REAL ESTATE INVESTMENTS**

- § 50:1 The kinds of real estate investments, in general
- § 50:2 The home
- § 50:3 The cooperative apartment
- § 50:4 The condominium
- § 50:5 The subdivision
- § 50:6 The cemetery lot
- § 50:7 Tax titles
- § 50:8 Real estate as part of a good investment program

## **CHAPTER 51. THE LAND TRUST**

### **A. THE NATURE OF THE LAND TRUST**

- § 51:1 The use of the land trust

- § 51:2 The legal nature of the land trust
- § 51:3 The “hybrid” land trust
- § 51:4 Checklist: Advantages of the land trust
- § 51:5 Checklist: Disadvantages of the land trust

## **B. CREATING, ACTIVATING AND OPERATING THE LAND TRUST**

- § 51:6 Setting up the land trust
- § 51:7 Applicability of Statute of Frauds
- § 51:8 Coordinating the land trust with other entities
- § 51:9 The buy-sell agreement and the land trust
- § 51:10 Construction of land trusts
- § 51:10.50 Amending a land trust
- § 51:11 Terminating the land trust

## **C. THE TRUSTEE OF THE LAND TRUST**

- § 51:12 The trustee of the land trust
- § 51:13 The successor trustee of the land trust
- § 51:14 The duties and liabilities of the land trustee

## **D. THE DUTY TO DISCLOSE INFORMATION ABOUT THE LAND TRUST**

- § 51:15 The duty to disclose information about a land trust
- § 51:16 The Land Trust Beneficial Interest Disclosure Act
- § 51:17 Sale of residential property subject to Land Trust Act

## **E. THE RIGHTS OF BENEFICIARIES AND OTHERS**

- § 51:18 The right of the beneficiaries to deal with the trust property
- § 51:19 Transferring beneficial interests in the land trust
- § 51:20 Security interests in beneficial interests
- § 51:21 The Land Trust as Creditor Act
- § 51:22 The right of a beneficiary to force a sale or partition of the real estate
- § 51:23 Enforcing judgment against real estate in land trust

## **F. TAX IMPLICATIONS OF THE LAND TRUST**

- § 51:24 The income tax and the land trust
- § 51:25 The gift tax and the land trust
- § 51:26 Estate taxes and the land trust

## **CHAPTER 52. THE FARM AS AN INVESTMENT**

- § 52:1 The farm as an investment, generally

## TABLE OF CONTENTS

- § 52:2 Making profits operating an Illinois farm
- § 52:3 Problems of managing the farm investment
- § 52:4 The farm lease
- § 52:5 Emblements
- § 52:6 Selling the farm investment

## **CHAPTER 53. OTHER INVESTMENTS**

- § 53:1 Other investments, generally
- § 53:2 Puts and calls
- § 53:3 Commodities
- § 53:4 Oil and gas leases
- § 53:5 Patents
- § 53:6 Copyrights
- § 53:7 Assets of historical and genealogical significance
- § 53:8 Checklist: Disposing of historical and genealogical books, papers, letters, etc
- § 53:9 Collections: Antiques, art, stamps and coins
- § 53:10 Checklist: Ways to dispose of valuable collections

## **CHAPTER 54. STARTING A NEW BUSINESS**

- § 54:1 Problems in starting a new business, generally
- § 54:2 Checklist: Principal causes of business failure
- § 54:3 Buying an existing business
- § 54:4 Checklist: Advantages and disadvantages of buying the stock of a selling corporation
- § 54:5 Checklist: Some of the matters to be covered in buying business assets
- § 54:6 The sole proprietorship, generally
- § 54:7 Checklist: Advantages of the sole proprietorship
- § 54:8 Checklist: Disadvantages of the sole proprietorship
- § 54:9 The uses of the franchise
- § 54:10 Checklist: The advantages of a good franchise
- § 54:11 Checklist: Possible disadvantages of the franchise

## **CHAPTER 55. PARTNERSHIPS**

- § 55:1 The use of the partnership form of business
- § 55:2 The advantages of a partnership
- § 55:3 The disadvantages of a partnership and ways to avoid them
- § 55:4 The partnership agreement
- § 55:5 Formation of a partnership
- § 55:6 When property is partnership property
- § 55:7 The partner as agent of the partnership

- § 55:8 Partnership liable for partner's actionable conduct
- § 55:9 Partner's liability
- § 55:10 Partner's rights and duties
- § 55:11 General standards of partner's conduct
- § 55:12 Transfer of partner's transferable interest
- § 55:13 Events that cause a partner's dissociation
- § 55:14 Events that cause dissolution and winding up of a partnership business
- § 55:15 The limited partnership
- § 55:16 The joint venture
- § 55:17 Dissolving a partnership

## **CHAPTER 55A. LIMITED LIABILITY COMPANY**

- § 55A:1 Organization of a limited liability company
- § 55A:2 Limited liability company name
- § 55A:3 Articles of organization of limited liability company
- § 55A:4 Liability of members and managers of limited liability company
- § 55A:5 Management of limited liability company

## **CHAPTER 56. ORGANIZING THE CLOSE CORPORATION**

- § 56:1 The use of the corporate form
- § 56:2 Checklist: Advantages of incorporating
- § 56:3 Checklist: Disadvantages of incorporating
- § 56:4 The limited liability of shareholders
- § 56:5 Piercing the corporate veil
- § 56:6 Limiting the liability of directors
- § 56:7 Financing the new corporation
- § 56:8 Types of securities issued by corporations
- § 56:9 The incorporating procedure
- § 56:10 Checklist: Special problems of corporations
- § 56:11 The preincorporation subscription agreement
- § 56:12 The Illinois Close Corporation Act
- § 56:13 Written agreements by shareholders of close corporations for conduct of business
- § 56:14 Management of close corporation by shareholders
- § 56:15 The Illinois Limited Liability Company
- § 56:16 The thin corporation
- § 56:17 Checklist: Ways to keep the original investment to a minimum
- § 56:18 The Small Business Corporation
- § 56:19 Governmental regulation of sale of securities



## TABLE OF CONTENTS

§ 56:20 Corporation's respondeat superior liability

## **CHAPTER 57. THE PROFESSIONAL CORPORATION**

- § 57:1 The uses of the professional association or corporation
- § 57:2 The Professional Service Corporation Act
- § 57:3 The Professional Association Act
- § 57:4 Practicing law as a professional corporation or professional association

## **CHAPTER 58. PROBLEMS OF OPERATING THE CLOSELY HELD CORPORATIONS**

- § 58:1 The operating problems of corporations, generally
- § 58:2 Ethical problems in advising the close corporation
- § 58:3 The civil liability of corporate officers and directors
- § 58:4 Checklist: Grounds for civil liability of a corporate director under Illinois law
- § 58:5 Indemnification of officers and directors
- § 58:6 Checklist: Ways to avoid director's liability
- § 58:7 The criminal liability of corporate officers and directors
- § 58:8 Checklist: Acts which can make a director criminally liable
- § 58:9 The insurance program of the business entity
- § 58:10 Checklist: Suggestions about the company's insurance program
- § 58:11 The doctrine of corporate opportunity
- § 58:12 "Doing business" outside Illinois

## **CHAPTER 59. PROVIDING FOR BUSINESS CONTROL AND CONTINUATION**

- § 59:1 The importance of keeping a business going
- § 59:2 Checklist: Reasons for keeping control of the close corporation
- § 59:3 Checklist: Ways to avoid losing control of the close corporation
- § 59:4 Providing continuity of management
- § 59:5 Controlling the voting of shares
- § 59:6 The informal pooling agreement
- § 59:7 Shareholders' contracts
- § 59:8 The voting trust and the voting agreement
- § 59:9 Nonvoting shares
- § 59:10 Proxies

- § 59:11 Business continuation trusts
- § 59:12 Disposing of the family business on death of the owner
- § 59:13 Direction in the will to continue the business
- § 59:14 Direction in the will to incorporate
- § 59:15 Obtaining court authority to continue the business

## **CHAPTER 60. THE BUY-SELL AGREEMENT**

- § 60:1 The use of buy-sell agreements, generally
- § 60:2 Checklist: Advantages of the buy-sell agreement
- § 60:3 Restrictions on the sale of stock
- § 60:4 Fixing the purchase price
- § 60:5 Providing for payment of the purchase price
- § 60:6 The buy-sell agreement for the sole proprietorship
- § 60:7 The buy-sell agreement for the partnership
- § 60:8 The corporation's buy-sell agreement
- § 60:9 Tax consequences of the buy-sell agreement

## **CHAPTER 61. RIGHTS OF STOCKHOLDERS**

- § 61:1 The rights of stockholders, generally
- § 61:2 Checklist: The rights of stockholders
- § 61:3 The right to inspect corporate books and records
- § 61:4 The problems of the minority stockholder
- § 61:5 Statutory shareholder remedies
- § 61:6 The court ordered purchase of a shareholder's shares
- § 61:7 The fiduciary obligation of those in control of a closely held corporation
- § 61:8 Right of shareholders to dissent

## **CHAPTER 62. SELLING OR LIQUIDATING THE CLOSE CORPORATION**

- § 62:1 Deciding whether to retain or sell the business
- § 62:2 Checklist: Advantages of selling out during one's lifetime
- § 62:3 Checklist: Disadvantages of selling out during one's lifetime
- § 62:4 The pros and cons of going public
- § 62:5 Appointment of receiver for corporation
- § 62:6 The liquidation trust
- § 62:7 Dissolving the corporation

## **CHAPTER 63. *[Reserved]***

TABLE OF CONTENTS

**CHAPTER 64. EMPLOYMENT AS PART OF THE ESTATE PLAN**

- § 64:1     Selecting the job
- § 64:2     Checklist: Benefits provided by some or all employers
- § 64:3     Checklist: Essential facts about a prospective employer
- § 64:4     A promotion or a change of jobs
- § 64:5     Checklist: Factors to be weighed in considering a new job
- § 64:6     Checklist: Laws regulating wages, hours and other conditions of employment
- § 64:7     The employment contract
- § 64:8     The covenant not to compete
- § 64:9     The trade secrets agreement
- § 64:10    The work for hire agreement
- § 64:11    Employee manuals
- § 64:12    The executive's salary
- § 64:13    The executive bonus
- § 64:14    Deferred compensation
- § 64:15    Employee stock purchase plans
- § 64:16    The incentive stock option plan
- § 64:17    Death benefits
- § 64:18    Group life insurance
- § 64:19    Individual life insurance contract
- § 64:20    Split dollar life insurance
- § 64:21    The cafeteria plan
- § 64:22    Dependent care assistance
- § 64:23    Sickness and disability payments
- § 64:24    The employee's home office
- § 64:25    Other company benefits
- § 64:26    Terminating the employment
- § 64:27    State unemployment compensation
- § 64:28    Checklist: Eligibility requirements for unemployment compensation

**CHAPTER 65. *[Reserved]***

**CHAPTER 66. *[Reserved]***

**CHAPTER 67. *[Reserved]***

**CHAPTER 68. *[Reserved]***

## **CHAPTER 69. THE LIFE INSURANCE CONTRACT**

- § 69:1 The nature and effective use of life insurance
- § 69:2 The insurable interest
- § 69:3 Checklist: Those who have an insurable interest
- § 69:4 Beneficiary clauses
- § 69:5 Checklist: Steps in forming a sound beneficiary clause
- § 69:6 Changing the beneficiary
- § 69:7 Settlement options
- § 69:8 Loan and cash settlement provisions
- § 69:9 Double indemnity
- § 69:10 Waiver of premiums
- § 69:11 The incontestable clause
- § 69:12 Misstatement of age
- § 69:13 Suicide
- § 69:14 Misrepresentations by applicant
- § 69:15 Killing of insured by beneficiary
- § 69:16 Life insurance and airplane accidents
- § 69:17 Other provisions of the life insurance contract
- § 69:18 Purchase of insurance by a minor
- § 69:19 The third party beneficiary

## **CHAPTER 70. KINDS OF LIFE INSURANCE**

- § 70:1 The kinds of life insurance, generally
- § 70:2 Ordinary life insurance
- § 70:3 Family income and maintenance insurance
- § 70:4 Annuity policies
- § 70:5 The variable annuity
- § 70:6 Endowment policies
- § 70:7 Juvenile insurance
- § 70:8 Term insurance
- § 70:9 Credit life insurance
- § 70:10 Mortgage insurance
- § 70:11 Flight insurance
- § 70:12 Veteran's life insurance

## **CHAPTER 71. GETTING THE MOST OUT OF LIFE INSURANCE**

- § 71:1 The objectives of life insurance
- § 71:2 Checklist: Advantages of life insurance
- § 71:3 Checklist: Disadvantages of life insurance
- § 71:4 The amount of life insurance needed
- § 71:5 The ownership of the policy

## TABLE OF CONTENTS

|         |   |
|---------|---|
| § 71:6  | Life insurance and the marital deduction                            |
| § 71:7  | The life insurance trust  |
| § 71:8  | Keeping life insurance proceeds out of the insured's taxable estate |
| § 71:9  | Programming life insurance  |
| § 71:10 | Checklist: Special reasons for life insurance for the wife          |
| § 71:11 | Life insurance for the minor children                               |
| § 71:12 | Payment of proceeds to beneficiary                                  |

## CHAPTER 72. GIFTS IN THE ESTATE PLAN

|         |  |
|---------|--|
| § 72:1  | Gifts, in general                                  |
| § 72:2  | Checklist: Advantages of making large gifts        |
| § 72:3  | Checklist: Disadvantages of making large gifts     |
| § 72:4  | Checklist: Suggestions for selecting gift property |
| § 72:5  | Legal requirements of a gift                       |
| § 72:6  | Undue influence in causing a gift                  |
| § 72:7  | Gifts of fractional interests                      |
| § 72:8  | Giving the family residence                        |
| § 72:9  | Timing the gift                                    |
| § 72:10 | The gift and leaseback                             |
| § 72:11 | Gift in contemplation of death                     |
| § 72:12 | Gifts to the spouse                                |
| § 72:13 | Mental capacity required to make a gift            |

## CHAPTER 73. PRESUMPTIONS ABOUT GIFTS OF PROPERTY

|        |   |
|--------|---|
| § 73:1 | Presumptions about gifts, generally                                   |
| § 73:2 | Presumptions about gifts of property                                  |
| § 73:3 | The presumption of gift of property placed in joint tenancy           |
| § 73:4 | Rebutting the presumption of gift of property placed in joint tenancy |
| § 73:5 | The convenience account   |

## CHAPTER 74. *[Reserved]*

## CHAPTER 75. FRAUDULENT GIFTS AND TRANSFERS

|        |  |
|--------|--|
| § 75:1 | The problems of fraudulent gifts and transfers                         |
| § 75:2 | Transfers in fraud of the spouse                                       |
| § 75:3 | Checklist: Legal principles applicable to transfers in fraud of spouse |

§ 75:4 Transfers in fraud of creditors

## **CHAPTER 76. CHARITABLE GIFTS**

- § 76:1 Charitable gifts, in general
- § 76:2 Checklist: Ways to make gifts to charities
- § 76:3 Checklist: Advantages of lifetime charitable gifts
- § 76:4 Checklist: Disadvantages of lifetime charitable gifts
- § 76:5 Checklist: Ways to avoid fraudulent charities
- § 76:5.50 The Illinois Solicitation for Charity Act
- § 76:6 Charitable contribution deductions
- § 76:7 Organizations eligible to receive tax-deductible charitable gifts
- § 76:8 The ceiling on charitable gifts
- § 76:9 The donees that do or do not qualify to receive charitable contributions
- § 76:10 The gift of property to a charity
- § 76:11 Performing services for a charity
- § 76:12 The bargain sale to a charity
- § 76:13 Contributions of future interests in tangible personal property
- § 76:14 The charitable remainder annuity trust
- § 76:15 The charitable remainder unitrust
- § 76:16 The pooled income fund
- § 76:17 The charitable gift of the residence or farm
- § 76:18 The Charitable Trust Act

## **CHAPTER 77. DANGEROUS AND INEFFECTIVE ESTATE PLANNING “TOOLS”**

- § 77:1 Avoiding the use of dangerous and ineffective “tools”
- § 77:2 Checklist: Dangerous and ineffective estate planning “tools”
- § 77:3 The buried coffee can, mattress, etc
- § 77:4 Large accumulations of cash
- § 77:5 The homemade will
- § 77:6 The undelivered deed and other documents
- § 77:7 The joint safe deposit box

## **CHAPTER 78. FRAUD, DURESS AND UNDUE INFLUENCE AND OTHER IMPROPER CONDUCT**

- § 78:1 The problems of fraud, duress, undue influence, etc.
- § 78:2 Fraud
- § 78:3 Duress

## TABLE OF CONTENTS

|         |   |
|---------|---|
| § 78:4  | Undue influence   |
| § 78:5  | Wrongful interference with inheritance or gift                          |
| § 78:6  | Wrongful destruction of will  |
| § 78:7  | Trusts by operation of law  |
| § 78:8  | The constructive trust  |
| § 78:9  | The existence of a fiduciary relationship                               |
| § 78:10 | Rebutting the presumption of undue influence                            |
| § 78:11 | The constructive trust and the statute of limitations                   |
| § 78:12 | The duties of the constructive trustee                                  |
| § 78:13 | Damages for breach of fiduciary relationship                            |
| § 78:14 | Right to follow constructive trust property into hands<br>of transferee |
| § 78:15 | The nature of the resulting trust                                       |

## **CHAPTER 79. REDUCING THE IMPACT OF CLAIMS, LOSSES AND ESTATE DEPLETION**

|        |  |
|--------|--|
| § 79:1 | Reducing the impact of catastrophe, generally  |
| § 79:2 | Homeowner's and renter's insurance             |
| § 79:3 | Personal and family liability                  |
| § 79:4 | Charge plate liability                         |
| § 79:5 | Automobile liability                           |
| § 79:6 | Personal theft insurance                       |
| § 79:7 | Other types of insurance protection            |
| § 79:8 | Professional liability insurance               |
| § 79:9 | Super liability to one or more million dollars |

## **CHAPTER 80. PLANNING FOR DEBTORS AND FINANCIALLY DISTRESSED**

|         |  |
|---------|--|
| § 80:1  | The significance of debts in estate planning                                     |
| § 80:2  | Checklist: Factors which may disturb the burden of<br>estate debts               |
| § 80:3  | Personal and business debts  |
| § 80:4  | Checklist: Ways a person may be compelled to make<br>support payments for others |
| § 80:5  | Statute of limitations and statutes of repose                                    |
| § 80:6  | Table: Limitations of actions  |
| § 80:7  | Effect of person's death on statute of limitations                               |
| § 80:8  | The statute of limitations in medical malpractice<br>cases                       |
| § 80:9  | Checklist: Facts which may toll the statute of<br>limitations                    |
| § 80:10 | The survival and abatement of causes of action                                   |
| § 80:11 | Checklist: Causes of action which survive in Illinois                            |

- § 80:12 Checklist: Causes of action which do not survive in Illinois
- § 80:13 Estate planning for the financially distressed
- § 80:14 Debtors' exemptions
- § 80:15 Usurious interest
- § 80:16 Homestead
- § 80:17 Debt adjustment
- § 80:18 Bankruptcy
- § 80:19 Discharge of debtor
- § 80:20 Debts not discharged in bankruptcy
- § 80:21 Governmental assistance
- § 80:22 Charitable assistance
- § 80:23 Fraternal benefits

## **CHAPTER 81. DEALING WITH PROBLEMS CAUSED BY SICKNESS AND ACCIDENT**

- § 81:1 Reducing the devastation caused by sickness and accident
- § 81:2 Checklist: Financial aids when sickness strikes
- § 81:3 Checklist: Forms of recovery when an accident strikes
- § 81:4 *[Reserved]*
- § 81:5 Health and accident insurance
- § 81:6 Workers' compensation
- § 81:7 Actions for personal injuries
- § 81:8 Wrongful death

## **CHAPTER 82. *[Reserved]***

## **CHAPTER 83. *[Reserved]***

## **CHAPTER 84. *[Reserved]***

# **Volume 18**

## **CHAPTER 85. WHEN A PERSON DIES**

- § 85:1 The immediate problems created by a death
- § 85:2 The legal definition of death
- § 85:3 The inquest
- § 85:4 The autopsy
- § 85:5 Form: Authorization by decedent to perform autopsy



## TABLE OF CONTENTS

|           |   |
|-----------|---|
| § 85:6    | Form: Authorization by spouse or adult child to perform autopsy |
| § 85:6.50 | Liability for wrongful autopsy                                  |
| § 85:7    | Disposition of the body   |
| § 85:7.50 | Determining the right to control the disposition of remains     |
| § 85:8    | Suicide   |
| § 85:9    | The body and its burial   |
| § 85:10   | Checklist: Provisions relating to the Cemetery Protection Act   |
| § 85:11   | Pre-need funeral contracts                                      |
| § 85:12   | Funeral arrangements  |
| § 85:13   | The obituary  |
| § 85:14   | Cremation   |
| § 85:15   | The proof of death  |
| § 85:16   | Disinterment  |
| § 85:17   | Liability for improper manner of reinterment                    |

## **CHAPTER 86. STEPS IMMEDIATELY FOLLOWING A DEATH**

|         |  |
|---------|--|
| § 86:1  | The period immediately following a death   |
| § 86:2  | Checklist: Steps to be taken immediately after death                             |
| § 86:3  | Checklist: Additional steps to be taken before or soon after opening the estate  |
| § 86:4  | Checklist: Ways to find all the decedent's property                              |
| § 86:5  | Checklist: Ways to make cash available quickly                                   |
| § 86:6  | Obtaining release of bank accounts, box, etc                                     |
| § 86:7  | Form: Letter requesting information and authorization of personal representative |
| § 86:8  | The decedent's incomplete transactions   |
| § 86:9  | The executor de son tort   |
| § 86:10 | Protecting rights in nonprobate assets   |

## **CHAPTER 87. WHEN A BENEFICIARY CAUSES THE DEATH OR HAS INFLICTED OTHER WRONGS**

|        |  |
|--------|--|
| § 87:1 | The consequences of a death caused by one who benefits |
| § 87:2 | The burden of proving wrongful causing of death        |
| § 87:3 | When an heir kills the decedent                        |
| § 87:4 | When a beneficiary kills a testator                    |
| § 87:5 | When a joint tenant kills another joint tenant         |
| § 87:6 | When the remainderman kills the life tenant            |
| § 87:7 | When a trust beneficiary kills the donor               |
| § 87:8 | When an insurance beneficiary kills the insured        |

- § 87:9 When a beneficiary kills one covered by pension, profit sharing or other form of benefit
- § 87:10 When a parent has neglected a child who is now deceased
- § 87:11 When a beneficiary has been convicted of certain offenses against an elderly person or a person with a disability

## **CHAPTER 88. AVOIDING PROBATE**

- § 88:1 Determining whether probate is necessary
- § 88:2 Checklist: Some reasons an estate is probated
- § 88:3 Checklist: Situations where probate may not be necessary
- § 88:4 Avoiding probate by using a living trust
- § 88:5 Agreement not to probate an estate
- § 88:6 Form: Agreement of heirs to settle estate without administration
- § 88:7 Using a bond in lieu of probate
- § 88:8 Form: Bond to avoid probate
- § 88:9 Clearing title to real estate without probate
- § 88:10 Litigation by an estate when no letters of office are issued

## **CHAPTER 89. SMALL ESTATES PROCEDURES**

- § 89:1 The use of small estates affidavits
- § 89:2 The contents of the small estates affidavit
- § 89:3 The obligation of the debtor to deliver funds and assets
- § 89:4 The persons entitled to payment of assets under a small estates affidavit
- § 89:5 The appointment of an agent for interested persons
- § 89:6 Indemnification by the affiant
- § 89:7 Affidavit by nonresident affiant
- § 89:8 Preparing the small estates affidavit for a decedent's estate
- § 89:9 Form: Small estate affidavit
- § 89:10 Estate planning to avoid probate, using the small estate affidavit and the comprehensive living trust

## **CHAPTER 90. THE PROBATE PROCESS**

- § 90:1 The probate process, generally
- § 90:2 The law governing probate proceedings
- § 90:3 Probate proceedings in federal courts

## TABLE OF CONTENTS

|         |   |
|---------|---|
| § 90:4  | Probate proceedings in more than one county                     |
| § 90:5  | Change of venue or judge in probate matters                     |
| § 90:6  | The resident agent for the nonresident executor                 |
| § 90:7  | The titles of representatives in decedents' estates             |
| § 90:8  | Terminology in probate proceedings                              |
| § 90:9  | Probate pleading, generally                                     |
| § 90:10 | The forms used in probate                                       |
| § 90:11 | Joinder of different matters in probate proceedings             |
| § 90:12 | The standing required to appear in probate proceedings          |
| § 90:13 | The procedure in obtaining jurisdiction over interested parties |
| § 90:14 | Form: Summons   |
| § 90:15 | Form: Affidavit of service of summons outside Illinois          |
| § 90:16 | Form: Affidavit of service by publication                       |
| § 90:17 | Form: Notice by publication                                     |
| § 90:18 | Form: Certificate of mailing notice by publication              |
| § 90:19 | Form: Order of default  |
| § 90:20 | Form: Appearance  |
| § 90:21 | Form: Notice of hearing on petition                             |
| § 90:22 | Form: Certificate of mailing                                    |
| § 90:23 | Form: Affidavit as to military service                          |
| § 90:24 | Motion and petition practice in probate proceedings             |
| § 90:25 | Form: Motion for leave to appear (U.P.F. No. 49)                |
| § 90:26 | The need to sign probate documents                              |
| § 90:27 | The motion for judgment on the pleadings                        |
| § 90:28 | The motion for summary judgment                                 |
| § 90:29 | The motion to strike an affirmative defense                     |
| § 90:30 | Setting the motion or petition for hearing                      |
| § 90:31 | Form: Notice of motion  |
| § 90:32 | Form: Order setting motion for hearing                          |
| § 90:33 | Depositions in probate matters                                  |
| § 90:34 | Form: Notice of discovery deposition                            |
| § 90:35 | Form: Notice of evidence deposition                             |
| § 90:36 | Form: Subpoena for deposition                                   |
| § 90:37 | Form: Commission to take deposition outside Illinois            |
| § 90:38 | Form: Notice of filing deposition                               |
| § 90:39 | Jury trials in probate matters                                  |
| § 90:40 | Form: Jury demand   |
| § 90:41 | The doctrine of relation back                                   |
| § 90:42 | Form: Subpoena  |
| § 90:43 | Compelling attendance of witnesses and productions of documents |
| § 90:44 | Taking testimony in probate proceedings                         |
| § 90:45 | Appeals from orders of probate court                            |

## **CHAPTER 91. THE PROBATE JUDGE AND THE PROBATE COURT**

- § 91:1 The organization of the probate court
- § 91:2 The probate judge
- § 91:3 Substitution of judges in probate proceedings
- § 91:4 The conduct of the probate judge
- § 91:5 Ex parte communications with the probate court
- § 91:6 The circuit clerk
- § 91:7 Form: Certified copy of document
- § 91:8 Form: Exemplification
- § 91:9 Probate court files
- § 91:10 The public's right of access to court records
- § 91:11 The trial court's review of a request to seal court records

## **CHAPTER 92. THE ATTORNEY IN PROBATE PROCEEDINGS**

- § 92:1 The role of the attorney in probate proceedings, generally
- § 92:1.50 The role of the Attorney General in probate proceedings
- § 92:2 The attorney's employment agreement
- § 92:3 The attorney for the personal representative
- § 92:4 The attorney's conflicts of interest in handling probate matters
- § 92:5 Handling a client's property
- § 92:6 The judicial disqualification of an attorney
- § 92:7 The attorney as witness
- § 92:8 Sanctions imposed upon attorneys
- § 92:9 Contempt of court by the attorney
- § 92:10 Discipline of attorney for improper conduct
- § 92:11 Criminal liability of the probate attorney
- § 92:12 Civil liability of the probate attorney
- § 92:13 Liability of attorney for libel and slander
- § 92:14 Liability of attorney for actions of partners, associates, paralegals, secretaries, and other staff members
- § 92:15 Handling probate files—Duty to keep records

## **CHAPTER 93. ADMINISTRATION TO COLLECT**

- § 93:1 The nature of the administration to collect
- § 93:2 Proceedings to appoint an administrator to collect
- § 93:3 The qualifications and selection of the administrator to collect

## TABLE OF CONTENTS

|         |  |
|---------|--|
| § 93:4  | The petition for the appointment of an administrator to collect          |
| § 93:5  | Form: Petition for letters of administration to collect                  |
| § 93:6  | The oath and bond of the administrator to collect                        |
| § 93:7  | The powers of a guardian of a deceased ward as administrator to collect  |
| § 93:8  | The powers and duties of the administrator to collect                    |
| § 93:9  | Form: Petition of administrator to collect to vote corporate stock       |
| § 93:10 | Form: Order granting authority to administrator to collect to vote stock |
| § 93:11 | The termination of the powers of the administrator to collect            |

## **CHAPTER 94. PROTECTING THE PROPERTY OF THE MISSING PERSON**

|        |   |
|--------|---|
| § 94:1 | Problems of the missing person  |
| § 94:2 | Administration to collect for a missing person                                      |
| § 94:3 | Form: Petition for letters of administration to collect for missing person          |
| § 94:4 | Form: Notice by publication to missing person                                       |
| § 94:5 | Form: Notice of issuance of letters of administration to collect for missing person |
| § 94:6 | Powers and duties of administrator to collect                                       |
| § 94:7 | Termination of powers of administrator to collect                                   |

## **CHAPTER 95. SUMMARY ADMINISTRATION**

|         |  |
|---------|--|
| § 95:1  | The nature of summary administration                                     |
| § 95:2  | The advantages and disadvantages of summary administration               |
| § 95:3  | Requirements for distribution on summary administration                  |
| § 95:4  | The petition for summary administration                                  |
| § 95:5  | Form: Petition for admission of will and summary administration          |
| § 95:6  | Form: Petition for summary administration in intestate estate            |
| § 95:7  | The consent to summary administration                                    |
| § 95:8  | The refunding bond   |
| § 95:9  | The notice of hearing  |
| § 95:10 | Form: Notice of petition for summary administration of decedent's estate |
| § 95:11 | The filing and disposition of claims                                     |

- § 95:12 The powers of the court on summary administration
- § 95:13 Form: Order admitting will and for summary administration
- § 95:14 Form: Order for summary administration of intestate estate
- § 95:15 Procedure upon refunding distributed property
- § 95:16 Payment or delivery of personal estate on order for summary administration

## **CHAPTER 96. INDEPENDENT ADMINISTRATION**

- § 96:1 The nature of independent administration
- § 96:2 Form: Petition for probate of will and for letters testamentary—Independent administration
- § 96:3 Form: Petition for letters of administration—Independent administration
- § 96:4 Notice to interested persons—Independent administration
- § 96:5 Form: Notice to heirs and legatees regarding rights during independent administration; Petition to terminate independent administration—Cook County
- § 96:6 Form: Notice to heirs and legatees of rights in independent administration—Downstate
- § 96:7 Form: Notice to heirs and legatees—Will admitted
- § 96:8 Form: Notice of heirs—Petition for letters of administration (or letters of administration with will annexed)
- § 96:9 Form: Proof of mailing and publication
- § 96:10 Objections to independent administration
- § 96:11 The order for independent administration
- § 96:12 Protection during independent administration of persons under disability
- § 96:13 The personal fiduciary
- § 96:14 Termination of independent administration status
- § 96:15 Form: Petition to terminate independent administration
- § 96:16 Form: Notice of termination of independent administration
- § 96:17 Court proceedings during independent administration
- § 96:18 Service of inventory
- § 96:19 Spouse and child awards
- § 96:20 Administrative powers of the independent representative
- § 96:21 Protection of persons dealing with an independent representative

## TABLE OF CONTENTS

|         |  |
|---------|--|
| § 96:22 | Form: Petition to convert to independent administration                                |
| § 96:23 | Form: Order converting to independent administration                                   |
| § 96:24 | Distribution   |
| § 96:25 | Closing the estate   |
| § 96:26 | Form: Order converting to independent administration for the purpose of closing estate |
| § 96:27 | Form: Final report of independent representative                                       |
| § 96:28 | Form: Notice of final report—Independent administration                                |
| § 96:29 | Form: Receipt and approval of closing of independent administration                    |
| § 96:30 | Form: Order of discharge—Independent administration                                    |

## CHAPTER 97. THE DECEDENT'S HEIRSHIP

|         |   |
|---------|---|
| § 97:1  | The descent and distribution of property  |
| § 97:2  | Illinois laws of descent and distribution   |
| § 97:3  | Table: Illinois laws of intestate descent and distribution                                      |
| § 97:4  | Posthumous children   |
| § 97:5  | Determining nearest kindred   |
| § 97:6  | Table: Determining nearest kindred according to the rules of civil law                          |
| § 97:7  | Finding the nearest kindred   |
| § 97:8  | The doctrine of the worthier title  |
| § 97:9  | Inheritance by, from, and through children born out of wedlock                                  |
| § 97:10 | The effect of a child being born out of wedlock on heirship                                     |
| § 97:11 | The effect of parent's neglect upon inheritance from child                                      |
| § 97:12 | Establishing right of child born out of wedlock to inherit from or through biological father    |
| § 97:13 | The effect of adoption on heirship  |
| § 97:14 | The proceeding to establish heirship  |
| § 97:15 | Proving heirship by affidavit   |
| § 97:16 | Form: Suggested form of affidavit of heirship (decedent left no surviving spouse or descendant) |
| § 97:17 | The hearing to establish heirship   |
| § 97:18 | Form: Application for leave to testify as to heirship   |
| § 97:19 | The contested proceeding to establish heirship  |
| § 97:20 | Evidence in contested heirship proceedings  |
| § 97:21 | The order finding heirship  |

- § 97:22 Form: Declaration of heirship
- § 97:23 Proceeding to amend the order of heirship
- § 97:24 Form: Petition to amend declaration of heirship
- § 97:25 Form: Order amending declaration of heirship

## **CHAPTER 98. SIMULTANEOUS DEATHS AND COMMON CATASTROPHES**

- § 98:1 The problems created by two deaths at or about the same time
- § 98:2 The Uniform Simultaneous Death Act
- § 98:3 The burden of proof under the Simultaneous Death Act
- § 98:4 The effect of a simultaneous death, common catastrophe or survival clause in the will

## **CHAPTER 99. MISSING HEIRS AND ESCHEATING PROPERTY**

- § 99:1 The problems of missing heirs and beneficiaries
- § 99:2 Using the internet to find missing heirs
- § 99:3 Checklist: Other ways to find missing heirs and beneficiaries
- § 99:4 Escheat of real and personal estate
- § 99:5 Form: Petition and order for deposit of cash with county treasurer for the benefit of a lost heir or legatee
- § 99:6 Recovery of escheated property
- § 99:7 Form: Petition by lost heir or legatee for funds deposited with county treasurer
- § 99:8 Form: Order distributing deposited fund
- § 99:9 Disposition of benefits of missing heirs and beneficiaries
- § 99:10 Recovery of deposited funds by found beneficiary or heir

## **CHAPTER 100. OATH AND BOND OF PERSONAL REPRESENTATIVE**

- § 100:1 Oath of the personal representative
- § 100:2 Form: Oath of office
- § 100:3 Bond of the personal representative
- § 100:4 Form: Bond of legal representative—Surety
- § 100:5 —No surety
- § 100:6 Form: Bond—New or additional—No surety
- § 100:7 Joint or several bonds
- § 100:8 Amount of bond
- § 100:9 Surety on the bond



## TABLE OF CONTENTS

|          |  |
|----------|--|
| § 100:10 | Justification of sureties  |
| § 100:11 | Form: Application to act as an individual surety (1)                                   |
| § 100:12 | Waiver of surety   |
| § 100:13 | Acceptance of corporate representative   |
| § 100:14 | Form: Acceptance of office   |
| § 100:15 | Deposit in lieu or reduction of bond   |
| § 100:16 | Form: Petition for authority to deposit personal property and to reduce amount of bond |
| § 100:17 | Form: Order directing deposit of personal property and reducing bond                   |
| § 100:18 | Further bond or security   |
| § 100:19 | Additional bond for proceeds of sale or mortgage                                       |
| § 100:20 | Counter security   |
| § 100:21 | Release of surety  |
| § 100:22 | Release of corporate surety  |

## **CHAPTER 101. LIABILITY OF SURETIES ON THE BOND**

|         |  |
|---------|--|
| § 101:1 | The liability of sureties, generally       |
| § 101:2 | Property protected by bond                 |
| § 101:3 | Breach                                     |
| § 101:4 | Rights and remedies of sureties            |
| § 101:5 | Accounting by sureties                     |
| § 101:6 | Suits on surety bond                       |
| § 101:7 | Notice to representative of action on bond |

## **CHAPTER 102. OPENING THE INTESTATE ESTATE**

|          |   |
|----------|---|
| § 102:1  | Selecting the proper county                                       |
| § 102:2  | Opening the estate  |
| § 102:3  | The qualifications of the administrator                           |
| § 102:4  | The right to act as, or nominate, the administrator               |
| § 102:5  | Order of preference in issuance of letters of administration      |
| § 102:6  | Proceedings to appoint an administrator                           |
| § 102:7  | Form: Petition for letters of administration                      |
| § 102:8  | Notice of petition to appoint administrator                       |
| § 102:9  | Form: Notice of hearing on petition for letters of administration |
| § 102:10 | Filing amended petition as to omitted or unnotified heir          |
| § 102:11 | The oath and bond, or acceptance of office                        |
| § 102:12 | The order appointing the administrator                            |
| § 102:13 | Form: Appearance for appointment of administrator                 |

- § 102:14 Form: Order appointing legal representative of decedent's estate
- § 102:15 Form: Letters of office—Decedent's estate
- § 102:16 Appointing the guardian (conservator) as administrator
- § 102:17 Form: Petition of guardian or conservator to be appointed administrator
- § 102:18 Successor administrators
- § 102:19 Form: Petition for letters of administration de bonis non
- § 102:20 Revocation of letters and issuance of new letters of administration
- § 102:21 Appointment of special administrator
- § 102:22 Special administrator to prosecute or defend a wrongful death action
- § 102:23 Special administrator for deceased party to action if no petition for letters is filed
- § 102:24 Probating the estate of viable fetus

## **CHAPTER 103. THE PUBLIC ADMINISTRATOR AND GUARDIAN**

- § 103:1 The public administrator and guardian
- § 103:2 The powers and duties of the public administrator

## **CHAPTER 104. PROBATING THE WILL**

- § 104:1 Problems in probating the will
- § 104:2 The proper county to probate the will
- § 104:3 Form: Application to transfer will
- § 104:4 Form: Order transferring will
- § 104:5 The duty to file the will
- § 104:5.50 Access to electronic will
- § 104:6 Altering or destroying a will
- § 104:7 Duty of executor to present the will for probate
- § 104:8 Time limit for filing the will
- § 104:9 Declination of executor to serve
- § 104:10 Form: Declination of office
- § 104:11 The petition to probate the will
- § 104:11.50 Admission of electronic will to probate
- § 104:12 Form: Petition for probate of will and for letters testamentary
- § 104:13 Form: Affidavit as to copy of will
- § 104:14 The petition for letters of administration with the will annexed
- § 104:15 Form: Petition for probate of will and for letters of administration with the will annexed

## TABLE OF CONTENTS

|          |   |
|----------|---|
| § 104:16 | Form: Petition for letters of administration with the will annexed                                      |
| § 104:17 | The nonresident executor  |
| § 104:18 | Form: Designation of resident agent   |
| § 104:19 | The guardian ad litem   |
| § 104:20 | Notice of probate of will   |
| § 104:21 | Form: Notice to heirs and legatees of order denying admission of will to probate (no publication)       |
| § 104:22 | Form: Notice to heirs and legatees of order admitting will to probate (publication required)            |
| § 104:23 | Form: Notice to heirs and legatees of order denying admission of will to probate (publication required) |
| § 104:24 | Form: Entry of appearance—Probate of will   |
| § 104:25 | Effect of failure to give required notice   |
| § 104:26 | Presumptions that apply to the probate of a will  |
| § 104:27 | Procedure when party has been omitted   |
| § 104:28 | Rights of devisee, by adverse possession, against omitted party   |
| § 104:29 | When more than one will is offered for probate  |
| § 104:30 | Probating a later will  |
| § 104:31 | Family settlement agreements  |

## CHAPTER 105. PROVING THE WILL

|          |  |
|----------|--|
| § 105:1  | The procedures in proving wills                      |
| § 105:2  | The initial hearing to probate the self-proving will |
| § 105:3  | Proof of will by attestation clause                  |
| § 105:4  | Proof of will by affidavit of attesting witnesses    |
| § 105:5  | Form: Affidavit of attesting witnesses               |
| § 105:6  | Formal proof of will                                 |
| § 105:7  | The proof of the will                                |
| § 105:8  | Proof of handwriting                                 |
| § 105:9  | The depositions of witnesses                         |
| § 105:10 | Form: Application for deposition for witness to will |
| § 105:11 | Form: Commission for deposition of witness to will   |
| § 105:12 | Form: Deposition of witness to will                  |
| § 105:13 | The judge as a witness                               |
| § 105:14 | The duty of witnesses to appear                      |
| § 105:15 | The competency of witnesses                          |
| § 105:16 | The burden of proving the will                       |
| § 105:17 | The admissibility of evidence                        |
| § 105:18 | Proof of will by proof of codicil                    |
| § 105:19 | Extrinsic evidence of testamentary intent            |

## **CHAPTER 106. ADMITTING THE WILL TO PROBATE AND APPOINTING THE REPRESENTATIVE**

- § 106:1 The order admitting or denying the admission of the will to probate
- § 106:2 Form: Order admitting will to probate
- § 106:3 Form: Order denying will admission to probate
- § 106:4 Form: Certified copy of admitted will
- § 106:5 Appointing the executor
- § 106:6 Refusal to appoint executor nominated by testator
- § 106:7 Appointing successor executors or administrators
- § 106:8 Withdrawal of will after admission to probate
- § 106:9 Denial of admission of will to probate
- § 106:10 Collateral attack on the admission of the will

## **CHAPTER 107. THE GUARDIAN AD LITEM**

- § 107:1 The guardian ad litem
- § 107:2 The qualifications of the guardian ad litem
- § 107:3 The appointment of a guardian ad litem
- § 107:4 Form: Order appointing guardian ad litem
- § 107:5 Form: Answer of guardian ad litem
- § 107:6 The duties of the guardian ad litem
- § 107:7 The guardian ad litem in the probate of the will
- § 107:8 Form: Motion and order waiving appointment of guardian ad litem
- § 107:9 The compensation of the guardian ad litem

## **CHAPTER 108. PROBATE OF A FOREIGN WILL**

- § 108:1 Requirements for admission of foreign will
- § 108:2 Procedure for probate of foreign will
- § 108:3 Proof of foreign will by copy
- § 108:4 Original proof of foreign will in Illinois
- § 108:5 Form: Petition to probate foreign will
- § 108:6 Form: Order admitting foreign will to probate and directing issuance of letters
- § 108:7 Effect of probate of foreign will
- § 108:8 Disposition of personal estate of nonresident decedent

## **CHAPTER 109. PROBATING AN ESTATE ON PRESUMPTION OF DEATH**

- § 109:1 The presumption of death
- § 109:2 Extent of search and inquiry required

## TABLE OF CONTENTS

|          |   |
|----------|---|
| § 109:3  | Rebutting the presumption of death  |
| § 109:4  | Time of death under the presumption   |
| § 109:5  | Procedures in probating intestate estate on presumption of death  |
| § 109:6  | Form: Petition for letters of administration upon presumption of death                                    |
| § 109:7  | Form: Order directing issuance of letters upon presumption of death                                       |
| § 109:8  | Probating a will on presumption of death  |
| § 109:9  | Form: Petition to probate will upon presumption of death  |
| § 109:10 | Distributing the estate of a person presumed dead   |
| § 109:11 | Form: Petition to authorize distribution of estate on presumption of death                                |
| § 109:12 | Form: Order setting for hearing petition for distribution of estate on presumption of death               |
| § 109:13 | Form: Notice of hearing on petition to authorize distribution of estate on presumption of death           |
| § 109:14 | Form: Order directing distribution of estate upon presumption of death                                    |
| § 109:15 | Form: Bond for distribution of estate upon presumption of death   |
| § 109:16 | Form: Order directing deposit of the estate assets of decedent presumed to be dead                        |
| § 109:17 | Form: Bond of distributee upon disbursement by county treasurer of assets of decedent presumed to be dead |

## CHAPTER 110. PROBATING THE LOST WILL

|         |  |
|---------|--|
| § 110:1 | The lost will                                  |
| § 110:2 | The presumption of revocation of the lost will |
| § 110:3 | Rebutting the presumption of revocation        |
| § 110:4 | The proceeding to probate the lost will        |
| § 110:5 | Form: Petition to probate lost will            |
| § 110:6 | The burden of proving the lost will            |
| § 110:7 | Evidence in lost will cases                    |

## CHAPTER 111. THE DUTIES OF THE REPRESENTATIVE

|         |   |
|---------|---|
| § 111:1 | The representative's duties, generally                        |
| § 111:2 | Instructing the representative                                |
| § 111:3 | Form: Letter from the attorney to the personal representative |

- § 111:4 Checklist: Estate activities in the probate court
- § 111:5 Checklist: Estate activities outside the probate court
- § 111:6 Conflicts between or among representatives
- § 111:7 Authority of co-executors and co-administrators
- § 111:8 Authority of personal representative to enter into settlements of disputed claims
- § 111:9 The representative's duty to file returns and pay taxes

## **CHAPTER 112. THE RIGHTS AND OBLIGATIONS OF THIRD PERSONS DEALING WITH A FIDUCIARY**

- § 112:1 Problems of dealing with a fiduciary
- § 112:2 Definitions in the Fiduciary Obligations Act
- § 112:3 Responsibility of transferor to fiduciary for fiduciary's action
- § 112:4 Liability where negotiable instrument is endorsed by the fiduciary
- § 112:5 Liability when a check or other bill of exchange is drawn by the fiduciary
- § 112:6 Liability where check, etc. drawn by fiduciary is payable to fiduciary
- § 112:7 Bank deposits to the credit of the fiduciary as such
- § 112:8 Liability for checks drawn by fiduciary on account of principal
- § 112:9 Bank deposits to the personal credit of the fiduciary
- § 112:10 Deposits made in the name of two or more trustees

## **CHAPTER 113. THE FIDUCIARY TRANSFER OF SECURITIES ACT**

- § 113:1 The Fiduciary Transfer of Securities Act
- § 113:2 Assignment to a fiduciary
- § 113:3 Assignment by a fiduciary
- § 113:4 Notice of adverse claims

## **CHAPTER 113A. THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

- § 113A:1 The Revised Uniform Fiduciary Access to Digital Assets Act—Generally
- § 113A:2 Procedure for disclosing digital assets
- § 113A:3 Disclosure of content of electronic communications of deceased user

## TABLE OF CONTENTS

|           |  |
|-----------|--|
| § 113A:4  | Disclosure of other digital assets of deceased user  |
| § 113A:5  | Disclosure of content of electronic communications of principal  |
| § 113A:6  | Disclosure of other digital assets of principal  |
| § 113A:7  | Disclosure of other digital assets held in trust when trustee is original user                                 |
| § 113A:8  | Disclosure of contents of electronic communications held in trust when trustee not original user               |
| § 113A:9  | Disclosure of other digital assets held in trust when trustee not original user                                |
| § 113A:10 | Disclosure of contents of electronic communications and digital assets to guardian of person with a disability |
| § 113A:11 | Custodian compliance and immunity  |

## **CHAPTER 114. THE INVENTORY OF PROBATE ASSETS**

|         |  |
|---------|--|
| § 114:1 | The significance of probate assets     |
| § 114:2 | The inventory                          |
| § 114:3 | The supplemental inventory             |
| § 114:4 | Appraisal of personal estate           |
| § 114:5 | Appraisal of real estate               |
| § 114:6 | Inventories and appraisals as evidence |

## **CHAPTER 115. THE REPRESENTATIVE'S BOOKS, ACCOUNTS AND RECORDS**

|         |   |
|---------|---|
| § 115:1 | Keeping estate accounts and records                   |
| § 115:2 | Checklist: Keeping accounts in a moderate-size estate |
| § 115:3 | Record keeping in large estates                       |

## **CHAPTER 116. *[Reserved]***

## **CHAPTER 117. INVESTMENTS IN DECEDENT'S ESTATE**

|         |  |
|---------|--|
| § 117:1 | Investing funds during probate                     |
| § 117:2 | Proper investments in decedents' estates           |
| § 117:3 | Investments authorized by will                     |
| § 117:4 | Investments authorized by statute                  |
| § 117:5 | Investments authorized by court order              |
| § 117:6 | Form: Petition for authority to invest funds       |
| § 117:7 | Form: Order authorizing investment of estate funds |
| § 117:8 | Investments approved by beneficiaries              |

- § 117:9 Liability of representative for investment losses
- § 117:10 Checklist: Rules for investing estate funds
- § 117:11 Holding and transferring securities
- § 117:12 Form: Letter for transfer of securities
- § 117:13 Checklist: Factors to be considered in holding and transferring investments
- § 117:14 Checklist: Requirements for transfer of securities
- § 117:15 Desperate and worthless assets
- § 117:16 Form: Petition and order to destroy worthless personal estate
- § 117:17 Dealing with United States Savings Bonds
- § 117:18 Dealing with problem assets

## **CHAPTER 118. HANDLING THE DECEDENT'S PERSONAL ESTATE**

- § 118:1 The problems of personal property
- § 118:2 Disposing of chattel property
- § 118:3 Transferring title to the automobile
- § 118:4 Form: Letter for transfer of automobile title
- § 118:5 Lease, sale, mortgage or pledge of decedent's personal estate
- § 118:6 Mortgage of agricultural commodities
- § 118:7 The petition to lease, sell, mortgage or pledge personal estate
- § 118:8 Form: Petition to sell personal property
- § 118:9 Form: Notice of petition to sell personal property
- § 118:10 Form: Petition to mortgage or pledge personal property of decedent
- § 118:11 Form: Order setting for hearing the petition to mortgage personal property
- § 118:12 Form: Petition to authorize lease of personal property of decedent
- § 118:13 The order of sale of decedent's personal estate
- § 118:14 Form: Order to sell personal property
- § 118:15 Form: Notice of public sale of personal property
- § 118:16 Form: Order authorizing mortgage of personal property
- § 118:17 Form: Order authorizing lease of personal property of decedent
- § 118:18 The report of sale of decedent's personal estate
- § 118:19 Form: Report of sale of personal property and order approving report
- § 118:20 Completion of decedent's contracts
- § 118:21 Form: Petition for direction to perform contract of decedent



## TABLE OF CONTENTS

- § 118:22 Form: Order directing performance of decedent's contract
- § 118:23 Dealing with decedent's lost or misplaced property

## **CHAPTER 119. HANDLING THE DECEDENT'S REAL ESTATE**

- § 119:1 The problems relating to the decedent's real estate
- § 119:2 Control of decedent's real estate during probate
- § 119:3 The notice of probate
- § 119:4 Obtaining possession of decedent's real estate
- § 119:5 Leasing decedent's real estate
- § 119:6 Form: Petition for authority to lease real estate
- § 119:7 Form: Order granting authority to lease real estate
- § 119:8 Leasing for oil, gas, coal and other mineral developments
- § 119:9 Completion of decedent's contract to purchase real estate
- § 119:10 Completion of decedent's contract to convey or lease real estate

## **CHAPTER 120. SALE, LEASE OR MORTGAGE OF DECEDENT'S REAL ESTATE**

- § 120:1 Sale of real estate by heirs
- § 120:2 Sale of real estate by devisees
- § 120:3 Lease, sale or mortgage of real estate under power in will
- § 120:4 Form: Executor's deed
- § 120:5 Sale or mortgage of decedent's (or ward's) real estate
- § 120:6 Procedure for sale or mortgage of decedent's real estate
- § 120:7 Form: Petition to sell decedent's real estate
- § 120:8 Form: Bond for sale or mortgage of real estate—Surety
- § 120:9 —No surety
- § 120:10 Form: Order to sell decedent's real estate
- § 120:11 Form: Petition to mortgage decedent's real estate
- § 120:12 Form: Order to mortgage decedent's real estate
- § 120:13 Place and terms of sale
- § 120:14 Form: Notice by publication—Sale of real estate
- § 120:15 Terms of mortgage
- § 120:16 Appointment of appraisers
- § 120:17 Form: Order appointing real estate appraisers
- § 120:18 Form: Oath and report of real estate appraisers
- § 120:19 Power of court

- § 120:20 Report of sale or mortgage and approval
- § 120:21 Form: Report of sale of real estate
- § 120:22 Form: Report of mortgage of decedent's real estate  
and order approving
- § 120:23 Form: Order approving report of sale and directing  
deed
- § 120:24 Deed or conveyance
- § 120:25 Form: Deed from representative
- § 120:26 Accounting for proceeds of sale or mortgage
- § 120:27 Compelling lease, sale or mortgage of real estate
- § 120:28 No strict foreclosure
- § 120:29 Title conveyed by representative's conveyance
- § 120:30 Effect on representative's conveyance of successful  
will contest
- § 120:31 Warranties by representative
- § 120:32 Collateral attack on the sale of real estate

## **CHAPTER 121. CLEARING TITLE TO DECEDENT'S REAL ESTATE**

- § 121:1 Clearing title to decedent's real estate
- § 121:2 Clearing title to decedent's joint tenancy property
- § 121:3 Clearing title to decedent's intestate real estate
- § 121:4 Clearing title to real estate subject to decedent's life  
estate
- § 121:5 Clearing title to real estate devised in the will
- § 121:6 Clearing title to real estate sold on contract for deed
- § 121:7 Clearing title to real estate sold under power in will
- § 121:8 Clearing title to real estate sold to pay debts or  
distribute estate
- § 121:9 Clearing title to real estate registered under the  
Torrens Act
- § 121:10 Clearing title to real estate where there was no  
probate

## **CHAPTER 122. DISPOSING OF DECEDENT'S PARTNERSHIP INTERESTS**

- § 122:1 Disposing of decedent's general partnership interest
- § 122:2 Determining the Partnership Act applicable to  
settlement of a deceased partner's estate
- § 122:3 Determining and protecting a deceased partner's  
rights
- § 122:4 The nature of the partner's rights under the  
Uniform Partnership Act (1997)
- § 122:5 The effect of a partner's death on the partnership

## TABLE OF CONTENTS

- § 122:6 The decision to terminate or continue the partnership
- § 122:7 Determining the amount and terms of payment and recovering amount due for deceased partner's interest
- § 122:8 The alternatives available if the partnership business is not terminated
- § 122:9 Events causing dissolution and winding up of partnership business
- § 122:10 Settlement of accounts and contributions among partners
- § 122:11 The rights of the parties in a transfer of the decedent's estate rights
- § 122:12 Completing the transactions required to make a settlement and payment of amount due deceased partner's estate

## **CHAPTER 123. DISPOSING OF OTHER BUSINESS INTERESTS**

- § 123:1 Problems when the business owner dies, generally
- § 123:2 The disposition of the decedent's sole proprietorship
- § 123:3 Liability for continuing to operate a sole proprietorship without authority
- § 123:4 Obtaining court authority to operate a sole proprietorship
- § 123:5 Form: Petition to continue decedent's business
- § 123:6 Form: Notice of petition for authority to operate decedent's business
- § 123:7 Form: Order to continue decedent's business
- § 123:8 Operating the decedent's sole proprietorship
- § 123:9 Form: Monthly report of representative on operation of decedent's business
- § 123:10 Distributing the sole proprietorship
- § 123:11 Transferring the sole proprietorship to the decedent's spouse
- § 123:12 Form: Petition for authority to distribute decedent's business to decedent's spouse
- § 123:13 Form: Order granting authority to distribute decedent's business to decedent's spouse
- § 123:14 Disposing of the interest in the closely held corporation

## **CHAPTER 124. DEALING WITH THE DECEDENT'S INSURANCE AND OTHER BENEFITS**

- § 124:1 The problems of decedent's insurance, generally

- § 124:2 Homeowners', farmowners', and tenants' policies
- § 124:3 Insurance on goods and chattels
- § 124:4 Liability insurance
- § 124:5 Automobile insurance
- § 124:6 Right to proceeds of insurance on damaged and destroyed property
- § 124:7 Health and accident insurance
- § 124:8 Medical and hospitalization insurance
- § 124:9 Life insurance payable to the estate
- § 124:10 Life insurance payable to named beneficiary
- § 124:11 Exemption of life insurance proceeds from claims

## **CHAPTER 125. ANCILLARY ADMINISTRATION FOR NONRESIDENTS OF ILLINOIS**

- § 125:1 The need for ancillary administration in Illinois
- § 125:2 The Illinois executor nominated by a nonresident
- § 125:3 The situs of personal estate of nonresident
- § 125:4 Nominating and appointing the ancillary administrator
- § 125:5 Form: Petition for appointment of ancillary administrator
- § 125:6 Form: Order appointing ancillary administrator
- § 125:7 Rights and duties of the ancillary administrator
- § 125:8 Property in Illinois of nonresident decedent
- § 125:9 Sale of real estate

## **CHAPTER 126. THE POWERS OF A FOREIGN REPRESENTATIVE IN ILLINOIS**

- § 126:1 The powers of the foreign representative in Illinois, generally
- § 126:2 Form: Affidavit to obtain personal estate of nonresident estate
- § 126:3 Power of foreign representative to collect and remove personal estate
- § 126:4 Right of foreign representative to sue in Illinois
- § 126:5 Form: Bond for costs
- § 126:6 Form: Petition to substitute resident representative
- § 126:7 Lease, sale or mortgage of real or personal estate by foreign representative
- § 126:8 Deed by foreign representative

TABLE OF CONTENTS

**CHAPTER 127. THE ILLINOIS  
DECEDENT'S PROPERTY IN OTHER  
STATES**

- § 127:1 The problems involving decedent's property in other states
- § 127:2 Problems involving intangible personal property in other states
- § 127:3 Problems involving tangible personal property in other states
- § 127:4 Problems involving real estate in other states

**CHAPTER 128. RIGHTS OF SURVIVING  
SPOUSE AND CHILDREN**

- § 128:1 The rights of the surviving spouse, generally
- § 128:2 Checklist: Rights of surviving spouse in some or all cases
- § 128:3 The surviving spouse's award
- § 128:4 Form: Award to surviving spouse and children
- § 128:5 The child's award
- § 128:6 Allowance, notice and review of award
- § 128:7 The surviving spouse's selection
- § 128:8 Form: Election to take goods and chattels for award
- § 128:9 Effect of spouse's misconduct on survivor's benefits
- § 128:10 Frauds on the spouse

**CHAPTER 129. RENOUNCING THE WILL**

- § 129:1 The right to renounce the will
- § 129:2 Making the decision to renounce the will
- § 129:3 Creditor's right to prevent debtor's election of benefits under will
- § 129:4 The procedure for renouncing the will
- § 129:5 Form: Renunciation of will
- § 129:6 Renunciation for incompetent spouse
- § 129:7 Renunciation for deceased spouse
- § 129:8 Time for filing the renunciation
- § 129:9 Loss of right to renounce by acts amounting to election to take under the will
- § 129:10 The consequences of the renunciation
- § 129:11 The effect of the renunciation on out-of-state real estate
- § 129:12 Retraction of renunciation

**CHAPTER 130. ELECTION AND ESTOPPEL**

- § 130:1 The nature of an election

- § 130:2 The need for an election
- § 130:3 Who may make an election
- § 130:4 Time for election
- § 130:5 What constitutes an election
- § 130:6 Form: Beneficiary's statement as to election

## **CHAPTER 131. LAPSE**

- § 131:1 The lapse of bequests
- § 131:2 The anti-lapse statute—Bequests to descendants
- § 131:3 Will provisions that prevent lapse of bequests
- § 131:4 The disposition of a lapsed legacy

## **CHAPTER 132. ADEPTIONS, ADVANCEMENTS, RELEASE OF INHERITANCE AND ACCRETIONS**

- § 132:1 Factors that change the estate distribution, generally
- § 132:2 Ademption
- § 132:3 Sale of devised real estate on contract for deed
- § 132:4 Effect of partition of devised real estate
- § 132:5 Effect of condemnation of devised real estate
- § 132:6 Gift or transfer to will beneficiary as ademption
- § 132:7 Sale of specifically bequeathed or devised property by guardian
- § 132:8 Disposition of insurance proceeds from specifically bequeathed or devised property
- § 132:9 Advancement
- § 132:10 Release of inheritance to ancestor
- § 132:11 Form: Release of expectancy by prospective heir
- § 132:12 Accretions

## **CHAPTER 133. DEBTS AND OTHER FINANCIAL PROBLEMS IN THE ESTATE**

- § 133:1 The problems of debts, generally
- § 133:2 Business debts
- § 133:3 Dissolution of marriage and other support payments
- § 133:4 Pending litigation and judgments
- § 133:5 Form: Memorandum of judgment
- § 133:6 Form: Release (satisfaction) of judgment
- § 133:7 Litigation on behalf of the estate
- § 133:8 Incomplete contracts and leases
- § 133:9 Religious and charitable pledges
- § 133:10 Surety, guaranty and similar obligations

## TABLE OF CONTENTS

|          |   |
|----------|---|
| § 133:11 | Secured obligations                                 |
| § 133:12 | Doctor, hospital and similar expenses               |
| § 133:13 | Funeral expenses                                    |
| § 133:14 | Taxes   |
| § 133:15 | Attorneys' fees                                     |
| § 133:16 | Executor's or administrator's fees                  |
| § 133:17 | Accounting and management fees                      |
| § 133:18 | Claims for old age and blind assistance             |
| § 133:19 | Liability of nonprobate assets for decedent's debts |
| § 133:20 | Conflicting claims for property—Interpleader        |
| § 133:21 | Debts barred by the doctrine of merger              |

## **CHAPTER 134. CLAIMS AGAINST DECEDENTS' ESTATES**

### **A. PREPARING AND FILING CLAIMS AGAINST ESTATES**

|          |  |
|----------|--|
| § 134:1  | Claims against decedents' estates  |
| § 134:2  | Filing claims against estates  |
| § 134:3  | Form: Claim—Proof of service—Consent to allowance—Order allowing             |
| § 134:4  | Form and sufficiency of claim  |
| § 134:5  | Amending filed claims  |
| § 134:6  | Claims not due   |
| § 134:7  | Claim by representative or his attorney                                      |
| § 134:8  | Form: Petition to appoint special administration to defend, no estate opened |
| § 134:9  | Form: Order appointing special administrator to defend claim                 |
| § 134:10 | Form: Answer of special administrator to defend claim                        |
| § 134:11 | Court costs in claim matters   |

### **B. THE NEED TO PUBLISH OR SERVE CLAIM NOTICE**

|          |  |
|----------|--|
| § 134:12 | Publication, mailing, and delivery of claim notices    |
| § 134:13 | Form: Claim notice—Publication                         |
| § 134:14 | —Mailed or delivered                                   |
| § 134:15 | Form: Proof of mailing or delivery of claim notice     |
| § 134:16 | Late publication for claims                            |
| § 134:17 | The liability for failure to serve notice on claimants |
| § 134:18 | Form: Affidavit of compliance                          |
| § 134:19 | Recovery by an unnotified claimant                     |

- § 134:20 Receipt of actual notice by claimant
- § 134:21 Claimants who are known or are reasonably ascertainable

### **C. OTHER CIVIL ACTIONS AGAINST THE ESTATE**

- § 134:22 Other civil actions against the estate
- § 134:23 The need to file a claim where civil action is filed against the estate
- § 134:24 Procedure upon death of person entitled to bring actions
- § 134:25 Counterclaims against estates
- § 134:26 Suits against a personal representative in a foreign state
- § 134:27 The special administrator to defend claim against deceased where no letters of office have been issued
- § 134:28 Form: Motion to appoint special representative to defend—No estate opened
- § 134:29 Form: Order setting motion for appointment of special representative to defend for hearing
- § 134:30 Form: Order appointing special representative to defend—No estate opened
- § 134:31 Creditor's right to prevent debtor's election of benefits under will

## **CHAPTER 135. KINDS AND CLASSES OF CLAIMS AGAINST ESTATES**

- § 135:1 The kinds of claims against estates
- § 135:2 The classification of claims against decedents' estates
- § 135:3 Classification of claims
- § 135:4 Debts due the United States
- § 135:5 Interest on first class claims
- § 135:6 Secured claims
- § 135:7 Contingent claims
- § 135:8 Claims based upon written instruments
- § 135:9 Contracts implied in fact and in law
- § 135:10 Tort claims
- § 135:11 Form: Claim—Tort
- § 135:12 Claim for money held in trust
- § 135:13 Claims for services
- § 135:14 Claim for support of decedent's spouse or child
- § 135:15 Claims for rent
- § 135:16 Continuing liability for decedent's business activity
- § 135:17 The statutory custodial claim



## TABLE OF CONTENTS

- § 135:18 Claims by the Department of Public Aid against recipients of aid to aged, blind, and disabled
- § 135:19 Claims against estates of Medicaid recipients
- § 135:20 Laches as a defense
- § 135:21 Fees for attorney filing action against estate
- § 135:22 Claims barred by statute of limitations

## **CHAPTER 136. HEARING, ALLOWING AND DISALLOWING CLAIMS**

- § 136:1 Disposing of claims
- § 136:2 Allowance and disallowance of claims by representative
- § 136:3 Pleadings
- § 136:4 Discovery in probate claims proceedings
- § 136:5 Summary judgment in claims against an estate
- § 136:6 Jury trials
- § 136:7 Proceedings on hearing of claims
- § 136:8 The burden of proving claims
- § 136:9 Nonjury trial of claims
- § 136:10 The dismissal of claims
- § 136:11 Setting aside order allowing claim

## **CHAPTER 137. PAYMENT OF CLAIMS**

- § 137:1 Payment of claims
- § 137:2 Estate chargeable with legacies, expenses and claims
- § 137:3 Barring of late claims and claims not filed
- § 137:4 Claims against liability insurance
- § 137:5 Priority of payment of claims
- § 137:6 Liens upon decedent's property
- § 137:7 Compromise of claims
- § 137:8 Form: Petition to settle cause of action—Decedent's estate
- § 137:9 Form: Appearance and consent—Wrongful death
- § 137:10 Form: Order to settle cause of action—Decedent's estate
- § 137:11 Payment before allowance
- § 137:12 The burden of paying death taxes
- § 137:13 Right of life insurance beneficiary to subrogation when creditor applies policy proceeds to debt

## **CHAPTER 138. EXONERATION**

- § 138:1 The nature of exoneration
- § 138:2 No exoneration of encumbered interests in real estate

- § 138:3 Duty of beneficiary to reimburse
- § 138:4 Encumbrance on more than one property

## **CHAPTER 139. EQUITABLE APPORTIONMENT**

- § 139:1 The nature of equitable apportionment
- § 139:2 Determining whether equitable apportionment applies
- § 139:3 The beneficiaries who may be compelled to contribute
- § 139:4 Apportionment among beneficiaries under the will
- § 139:5 Apportionment among trust beneficiaries pursuant to provision directing payment of death taxes
- § 139:6 The debts that may be apportioned
- § 139:7 The manner of making apportionment
- § 139:8 Checklist: Obtaining approval of proposed apportionment
- § 139:9 Enforcing contribution by recipients of nonprobate assets

## **CHAPTER 140. CITATION PROCEEDINGS**

- § 140:1 The nature of citation proceedings
- § 140:2 The petition for citation
- § 140:3 Form: Petition for citation to recover property or discover information
- § 140:4 Form: Order for citation to recover property or discover information
- § 140:5 Service of citation
- § 140:6 Jurisdiction over nonresidents
- § 140:7 Form: Citation as to property
- § 140:8 The representative as respondent
- § 140:9 Trial by jury
- § 140:10 Citation hearing procedures
- § 140:11 Form: Order directing delivery of property to representative
- § 140:12 Form: Order directing issuance of execution to recover property
- § 140:13 The burden of proof in citation proceedings
- § 140:14 Determining the equitable ownership of decedent's assets
- § 140:15 The citation order as res judicata
- § 140:16 Personal property claimed by third party
- § 140:17 Form: Petition by third party to recover possession of property in possession of representative
- § 140:18 Form: Notice of petition by third party to recover property in possession of representative

## TABLE OF CONTENTS

- § 140:19 Form: Order directing representative to deliver property upon petition of third party
- § 140:20 Recovery of trust funds held by decedent

## **CHAPTER 141. THE PERSONAL LIABILITY OF THE REPRESENTATIVE**

- § 141:1 The conduct of the representative
- § 141:2 Standard of care imposed upon representative
- § 141:3 Failure to pay money or deliver property (devastavit)
- § 141:4 Form: Complaint for devastavit against representative and surety on the bond
- § 141:5 Liability of representative for mismanagement
- § 141:6 Self-dealing by the representative
- § 141:7 Liability of representative for interest
- § 141:8 Form: Petition of beneficiary to award interest against representative for failure to account
- § 141:9 Form: Order directing representative to pay interest on withheld property
- § 141:10 Liability of representative for debts due United States
- § 141:11 Criminal liability of representative
- § 141:12 Personal liability of representative on contracts made with third persons
- § 141:13 Liability for improper handling of taxes
- § 141:14 Liability for acts of co-representative
- § 141:15 Surcharging the personal representative
- § 141:16 Liability for act of agent or attorney
- § 141:17 Awarding damages, attorney fees against personal representative for wrongful act

## **CHAPTER 142. REVOKING THE LETTERS OF OFFICE**

- § 142:1 Revoking the letters of office
- § 142:2 Checklist: Grounds for revoking letters of office
- § 142:3 Checklist: Facts held not to be grounds for removal of representative
- § 142:4 Resignation of representative
- § 142:5 Revocation of letters upon probate of new will
- § 142:6 Proceedings to remove representative
- § 142:7 Form: Petition to revoke letters before completion of probate
- § 142:8 Form: Order directing citation to issue to representative to show cause why letters should not be revoked

- § 142:9 Form: Citation to show cause why letters should not be revoked
- § 142:10 Form: Answer of representative
- § 142:11 Form: Order revoking letters and directing issuance of letters to successor

## **CHAPTER 143. DISCLAIMERS**

- § 143:1 The nature of disclaimers
- § 143:2 The right to disclaim
- § 143:3 Disclaimer by personal representative of decedent or ward
- § 143:4 The contents of the disclaimer
- § 143:5 Form: Disclaimer by heir
- § 143:6 Form: Disclaimer by beneficiary under the will
- § 143:7 Delivery of the disclaimer
- § 143:8 The effect of the disclaimer
- § 143:9 When the right to disclaim is waived or barred
- § 143:10 The need for acceptance of the waiver
- § 143:11 Form: Waiver of right to disclaim
- § 143:12 Disclaiming property given under nontestamentary instruments

## **CHAPTER 144. THE CONSTRUCTION OF WILLS**

- § 144:1 The need to construe the will, generally
- § 144:2 The kinds of ambiguities in wills
- § 144:3 The ways wills are construed
- § 144:4 Will construction proceedings
- § 144:5 The general rules for construing wills
- § 144:6 List: Rules for construing wills
- § 144:7 List: Annotations on the meaning of various terms
- § 144:8 The meaning of the word “heirs”
- § 144:9 The devise or gift by implication
- § 144:10 The equitable doctrine of election

## **CHAPTER 145. WILL CONSTRUCTION PROCEEDINGS**

- § 145:1 The informal construction of wills
- § 145:2 The procedure in will construction cases
- § 145:3 Extrinsic evidence to construe a will
- § 145:4 List: Kinds of admissible extrinsic evidence
- § 145:5 Testimony of draftsman to construe a will
- § 145:6 Attorneys’ fees in will construction cases

## TABLE OF CONTENTS

### **CHAPTER 146. THE CY PRES DOCTRINE**

- § 146:1 The nature of the cy pres doctrine
- § 146:2 Checklist: Suggestions for drafting that may avoid need for applying cy pres doctrine
- § 146:3 Application of doctrine where testator has given suitable directions
- § 146:4 The required general charitable intention
- § 146:5 The doctrine of equitable deviation
- § 146:6 Failure of trust due to unattainable or impracticable objectives
- § 146:7 Disposition where purpose is accomplished or surplus funds remain
- § 146:8 Manner of effectuating charitable intent

### **CHAPTER 147. COMPENSATION OF THE ATTORNEY AND THE REPRESENTATIVE**

- § 147:1 The fees of the attorney and the representative, generally
- § 147:2 The right to attorney's fees
- § 147:3 How attorney's fees are determined
- § 147:4 Factors considered in arriving at the attorney's fees
- § 147:5 The use of fee schedules
- § 147:6 Time as a factor in fixing attorney's fees
- § 147:7 The lawyer's hourly rate
- § 147:8 The fee of the attorney who acts as executor or administrator
- § 147:9 Determining the fee of the executor or administrator
- § 147:10 Table: Executors' and Administrators' Fees
- § 147:11 Fees of co-representatives
- § 147:12 Fees in estates of veterans
- § 147:13 Reduction or forfeiture of the representative's compensation
- § 147:14 The court's determination of fees
- § 147:15 Recovering excessive attorney's fees
- § 147:16 The attorney's retaining lien
- § 147:17 Attorney's fee in citation proceedings

### **CHAPTER 148. CONTEMPT PROCEDURES IN PROBATE COURT**

- § 148:1 Contempt in the probate court
- § 148:2 Direct, criminal contempt cases
- § 148:3 List: Acts which may constitute direct, criminal contempt
- § 148:4 Contempt by the representative

§ 148:5 Procedure in civil contempt cases

## **CHAPTER 149. PREPARING TO CLOSE THE ESTATE**

- § 149:1 Preparing to close the estate
- § 149:2 Checklist: Steps to take before closing an estate
- § 149:3 Disposing of claims
- § 149:4 Deposits in court
- § 149:5 The clerk's final affidavit

## **CHAPTER 150. ACCOUNTS AND REPORTS OF REPRESENTATIVES**

- § 150:1 Duty of representative to account
- § 150:2 Actions for accounting by distributee
- § 150:3 Citation to compel accounting
- § 150:4 Form: Petition for citation against representative to account
- § 150:5 Form: Order directing issuance of citation against representative to make settlement
- § 150:6 Form: Order directing representative to account or show cause why he should not be held in contempt of court
- § 150:7 Form: Petition for attachment against representative for failure to account
- § 150:8 Form: Order directing issuance of attachment against representative for failure to account
- § 150:9 Stating an account for a representative who fails to account
- § 150:10 Stating an account for representative who is deceased or under legal disability
- § 150:11 Accounting by surety for representative who is deceased or under legal disability
- § 150:12 Accounting by surety for representative who fails to account
- § 150:13 Current accounts and reports
- § 150:14 Form: Current account of representative
- § 150:15 Form: Order approving current account
- § 150:16 Final accounts and reports
- § 150:17 Form: Final account of representative
- § 150:18 Form: Order approving final account on entry of appearance

## **CHAPTER 151. HEARING ON ACCOUNTS**

- § 151:1 The approval of accounts

## TABLE OF CONTENTS

|          |  |
|----------|--|
| § 151:2  | Notice of the hearing  |
| § 151:3  | The Attorney General as an interested party                            |
| § 151:4  | Form: Notice of account—Current or final                               |
| § 151:5  | Form: Appearance on account  |
| § 151:6  | Form: Order approving current account                                  |
| § 151:7  | Objections to the account  |
| § 151:8  | Hearing on the account   |
| § 151:9  | Ruling on the objections   |
| § 151:10 | The order approving or disallowing the account                         |
| § 151:11 | Form: Order overruling objections and approving account                |
| § 151:12 | Form: Order sustaining objections to account                           |
| § 151:13 | Collateral attack upon final account                                   |
| § 151:14 | Direct attack by party who failed to object to report prior to hearing |

## CHAPTER 152. DISTRIBUTING THE ESTATE

|          |  |
|----------|--|
| § 152:1  | The procedures in distributing the estate  |
| § 152:2  | List: Factors that may change the distribution of the estate   |
| § 152:3  | Abatement  |
| § 152:4  | Advancements   |
| § 152:5  | Assignment of a beneficiary's interest   |
| § 152:6  | Assignment of a beneficiary's interest to inheritance research firm                                  |
| § 152:7  | Distribution before claims are barred  |
| § 152:8  | Form: Petition to authorize distribution of estate assets fore expiration of six months              |
| § 152:9  | Form: Order authorizing distribution of estate assets before expiration of six months                |
| § 152:10 | Form: Refunding bond   |
| § 152:11 | Refunding by distributees  |
| § 152:12 | Form: Petition of representative to order distributee(s) to refund all or part of distributive share |
| § 152:13 | Form: Order directing distributee(s) to refund all or part of distributive share                     |
| § 152:14 | Distribution in satisfaction of spouse's and child's awards  |
| § 152:15 | Form: Petition to authorize distribution of estate on spouse's or child's award and close estate     |
| § 152:16 | Form: Order directing distribution of estate on spouse's or child's award and closing estate         |
| § 152:17 | Distribution in kind   |

- § 152:18 Form: Petition for authority to distribute property in kind
- § 152:19 Form: Order authorizing distribution in kind
- § 152:20 The foreign distributee
- § 152:21 Form: Petition by representative of foreign country to receive distribution
- § 152:22 Form: Order of distribution to representative of foreign country
- § 152:23 Form: Report of attorney-in-fact or consul
- § 152:24 Form: Receipt of distribution to attorney-in-fact or consul
- § 152:25 The minor or disabled adult distributee
- § 152:26 Form: Small estate affidavit—Minor
- § 152:27 —Disabled adult (incompetent)
- § 152:28 Deposit or investment of money of a ward, subject to court order
- § 152:29 Distributions to trusts
- § 152:30 Funding a marital bequest
- § 152:31 The order of distribution
- § 152:32 Distribution to attorney-in-fact
- § 152:33 Form: Petition by attorney-in-fact to receive distribution
- § 152:34 Form: Bond of attorney-in-fact
- § 152:35 Form: Order of distribution to attorney-in-fact
- § 152:36 Deposit of unclaimed money
- § 152:37 The report of distribution
- § 152:38 Form: Receipt on distribution
- § 152:39 Form: Report of distribution

## **CHAPTER 153. REOPENING THE ESTATE**

- § 153:1 The need to reopen an estate
- § 153:2 The procedure for reopening the estate
- § 153:3 Form: Petition to reopen estate and reinstate letters
- § 153:4 Form: Order reopening estate and directing reissuance of letters
- § 153:5 Proceedings after an estate is reopened
- § 153:6 Reopening the estate under 735 ILCS 5/2-1401 [formerly known as Section 72]
- § 153:7 Dealing with later discovered assets

## **CHAPTER 154. APPEALING PROBATE ORDERS**

- § 154:1 The appeal to the Appellate or Supreme Court
- § 154:2 When an order is appealable



## TABLE OF CONTENTS

- § 154:3 The bond on appeal
- § 154:4 List: Appealable orders
- § 154:5 List: Non-appealable orders
- § 154:6 Effect of appeal from order

## **CHAPTER 155. THE DECEDENT'S FINAL TAX OBLIGATIONS**

- § 155:1 The decedent's estate's possible liability for federal and state taxes
- § 155:2 Accumulating cash to pay tax liabilities

## **CHAPTER 156. THE DECEDENT'S FINAL FEDERAL INCOME TAX RETURN**

- § 156:1 The decedent's final federal income tax return(s)
- § 156:2 Filing the final income tax return when the estate is not probated
- § 156:3 Income includible on decedent's final return
- § 156:4 Exemptions and deductions on decedent's final federal income tax return
- § 156:5 Income tax returns for the deceased, missing, or terrorist victim

## **CHAPTER 157. FEDERAL INCOME TAXES ON ESTATES AND TRUSTS**

- § 157:1 Trusts and estates income tax returns
- § 157:2 Organizations taxed as trusts
- § 157:3 Tax rates for trusts and estates
- § 157:4 Estimated tax payments by trusts and estates—  
Form 1041ES
- § 157:5 When trust terminates
- § 157:6 When estate terminates
- § 157:7 Multiple trusts set up for tax avoidance purposes
- § 157:8 Income, deductions and credits of trusts and estates
- § 157:9 U.S. savings bond interest reportable by the  
fiduciary
- § 157:10 Income from property passing directly to estate  
beneficiaries
- § 157:11 Gain or loss on distribution of property in kind
- § 157:12 Distributions in kind to satisfy right to receive  
specific dollar amount or specific other property
- § 157:13 Distributions and transfers to trust
- § 157:14 Deductions and credits of trusts and estates
- § 157:15 Income tax or estate tax deduction of expenses
- § 157:16 Depreciation and depletion deductions

- § 157:17 Personal exemption
- § 157:18 Charitable contributions
- § 157:19 Trust's or estate's deduction for distributions to beneficiaries
- § 157:20 Distributions on termination of trust or estate
- § 157:21 Simple and complex trusts
- § 157:22 The distribution deduction of a simple trust
- § 157:23 Computing distributable net income (DNI) of a simple trust
- § 157:24 Distributions deduction of a complex trust or estate
- § 157:25 The 65 day election for estates and complex trusts
- § 157:26 Taxation of trust and estate beneficiaries
- § 157:27 When income is taxable to a beneficiary
- § 157:28 Types of trusts whose income is taxable to grantor or other owner
- § 157:29 Grantor as owner of reversionary trust if grantor has more than 5% interest
- § 157:30 Power to distribute corpus under definite standard
- § 157:31 Administrative powers that can be used for grantor's benefit
- § 157:32 Returns of trusts and estates
- § 157:33 Income and deductions in respect of decedent
- § 157:34 Other allowable deductions
- § 157:35 Deduction for estate tax attributable to income in respect of a decedent
- § 157:36 Computing the income tax deduction for estate tax
- § 157:37 Generation-Skipping transfers

## **CHAPTER 158. ILLINOIS INCOME TAXES**

### **A. ILLINOIS INCOME TAXES, GENERALLY**

- § 158:1 Illinois income taxes, generally
- § 158:2 The personal property tax replacement tax
- § 158:3 Effect of determination for federal tax purposes
- § 158:4 Exempt organizations

### **B. NONRESIDENTS' LIABILITY FOR ILLINOIS INCOME TAX**

- § 158:5 The liability of nonresidents for Illinois income tax, generally
- § 158:6 Allocation and apportionment of base income—  
General rule
- § 158:7 Compensation paid to nonresidents
- § 158:8 Nonbusiness income of persons other than residents

## TABLE OF CONTENTS

- § 158:9 Business income of persons other than residents
- § 158:10 Income tax returns for nonresidents

### **C. ILLINOIS PERSONAL INCOME TAX**

- § 158:11 The Illinois personal income tax, generally
- § 158:12 Base income and modifications thereto
- § 158:13 Standard exemptions
- § 158:14 Joint returns by husband and wife
- § 158:15 Withholding of state income tax
- § 158:16 Declarations and payment of estimated tax

### **CHAPTER 159. ILLINOIS TAX ON TRUST AND ESTATE INCOME**

- § 159:1 The Illinois trust and estate income tax, generally
- § 159:2 The base income of trusts and estates
- § 159:3 The allocation of income by estate and trusts, and beneficiaries other than residents
- § 159:4 The allocation of the liability for Illinois income tax between the trust or estate, and its beneficiaries
- § 159:5 The preparation and filing of the Illinois fiduciary income tax returns—Form IL-1041 and Schedule K-1-T
- § 159:6 Corrections or changes in the fiduciary income tax return

### **CHAPTER 160. THE ILLINOIS ESTATE TAX AND GENERATION-SKIPPING TRANSFER TAX**

- § 160:1 The Illinois estate tax
- § 160:2 Definitions
- § 160:3 Computing the amount of the Illinois estate tax
- § 160:4 Illinois generation-skipping transfer tax
- § 160:5 Determination of tax situs and valuation
- § 160:6 Returns and payments
- § 160:7 Supplemental returns; refunds
- § 160:8 Penalties for failure to file tax return or to pay tax
- § 160:9 Interest
- § 160:10 Liens and personal liability
- § 160:11 Reimbursement
- § 160:12 Parent as natural guardian for purposes of Section 2032A of the Internal Revenue Code
- § 160:13 Statute of limitations; claims for refund
- § 160:14 Circuit court jurisdiction and venue

- § 160:15 Duty of Attorney General; failure to pay tax; proceedings
- § 160:16 Agreements with other states for payment of tax imposed by this act

## **CHAPTER 161. OTHER TAXES IN ILLINOIS**

- § 161:1 State taxes, generally
- § 161:2 List: Some of the taxes, licenses, etc., payable to Illinois, its counties and municipalities
- § 161:3 The personal property replacement tax
- § 161:4 The real estate tax

## **CHAPTER 162. *[Reserved]***

## **CHAPTER 163. *[Reserved]***

## **CHAPTER 164. *[Reserved]***

## **CHAPTER 165. HANDLING MINORS' ESTATES WITHOUT GUARDIANSHIP**

- § 165:1 The need for the appointment of a guardian for a minor
- § 165:2 Avoiding appointment of a guardian of the person of a minor
- § 165:3 Avoiding appointment of a guardian of the estate of a minor
- § 165:4 Using the small estates affidavit to transfer a minor's funds
- § 165:5 Form: Small estate affidavit—Minor's estate
- § 165:6 Collecting a minor's social security benefits without appointing a guardian
- § 165:7 Guardianship for unborn child
- § 165:8 The emancipation of minors

## **CHAPTER 166. GIFTS AND OTHER TRANSFERS TO MINORS**

- § 166:1 Gifts to minors, generally
- § 166:2 List: Advantages of making gifts to minors
- § 166:3 The disadvantages of making gifts to minors
- § 166:4 Ways to make gifts to minors
- § 166:5 "Controlled" gifts to minors
- § 166:6 The Uniform Transfers to Minors Act

## TABLE OF CONTENTS

|          |   |
|----------|---|
| § 166:7  | List: Definitions in the Uniform Transfers to Minors Act  |
| § 166:8  | Nomination of custodian   |
| § 166:9  | Transfer by gift or exercise of power of appointment  |
| § 166:10 | Transfer authorized by will or trust  |
| § 166:11 | Other transfer by fiduciary   |
| § 166:12 | Transfer by obligor   |
| § 166:13 | Receipt for custodial property  |
| § 166:14 | Form: Manner of creating custodial property and effecting transfer; designation of initial custodian; control |
| § 166:15 | Single custodianship  |
| § 166:16 | Validity and effect of transfer   |
| § 166:17 | Care of custodial property  |
| § 166:18 | Powers of custodian   |
| § 166:19 | Use of custodial property   |
| § 166:20 | Custodian's expenses, compensation and bond   |
| § 166:21 | Exemption of third person from liability  |
| § 166:22 | Liability to third persons  |
| § 166:23 | Renunciation, resignation, death or removal of custodian—Designation of successor custodian                   |
| § 166:24 | Accounting by and determination of liability of custodian   |
| § 166:25 | Termination of custodianship  |

## CHAPTER 167. THE GUARDIANSHIP PROCEEDING

|         |  |
|---------|--|
| § 167:1 | The guardianship, generally                        |
| § 167:2 | Custody and visitation in guardianship proceedings |
| § 167:3 | Venue in guardianship proceedings                  |
| § 167:4 | Proceedings to appoint a guardian                  |
| § 167:5 | Form: Petition for guardian                        |
| § 167:6 | Form: Nomination by child over 14                  |
| § 167:7 | Form: Order appointing guardian                    |
| § 167:8 | Form: Letters of office—Guardian of person         |
| § 167:9 | —Guardian of estate                                |

## CHAPTER 168. SELECTING AND APPOINTING THE GUARDIAN

|         |  |
|---------|--|
| § 168:1 | Qualifications of a guardian                                 |
| § 168:2 | The “Superior Rights” of parents                             |
| § 168:3 | The right to designate a guardian of a minor or unborn child |
| § 168:4 | The nomination of a guardian by minor 14 or over             |

- § 168:5 Discretion of court in selecting guardian
- § 168:6 The oath and bond of the guardian
- § 168:7 Form: Oath of office
- § 168:8 Form: Bond of legal representative—Surety
- § 168:9 Form: Oath and bond of guardian
- § 168:10 The order appointing the guardian(s)
- § 168:11 Form: Letters of office—Guardian of person and estate
- § 168:12 Form: Order appointing guardian
- § 168:13 Form: Letters of office—Guardian of person
- § 168:14 —Guardian of estate
- § 168:15 Successor guardian

## **CHAPTER 169. SHORT-TERM AND STANDBY GUARDIANS**

- § 169:1 Designation of standby guardian
- § 169:2 Form: Designation of standby guardian
- § 169:3 Proceedings to appoint a standby guardian
- § 169:4 Form: Petition for guardian
- § 169:5 Form: Order appointing guardian
- § 169:6 The duties of the standby guardian
- § 169:7 Terminating or limiting the authority of a standby or short-term guardian
- § 169:8 The appointment of a short-term guardian
- § 169:9 Form: Appointment of short-term guardian
- § 169:10 Duties of the short-term guardian
- § 169:11 Terminating or limiting the authority of a standby or short-term guardian

## **CHAPTER 170. THE ACTIVITIES OF THE GUARDIAN**

- § 170:1 Duties of guardian
- § 170:1.50 Authority of guardian to make a will or trust for a minor
- § 170:2 Investment of ward's funds
- § 170:3 Use of ward's funds
- § 170:4 Form: Receipt for deposit of minor's money (U.P.F. No. 97)
- § 170:5 Form: Petition for withdrawal of ward's deposited funds (U.P.F. No. 98)
- § 170:6 Minors' contracts
- § 170:6.50 The estate's action based on a contingent fee agreement
- § 170:7 Claims against minors' estates
- § 170:8 The ward's causes of action

## TABLE OF CONTENTS

|             |  |
|-------------|--|
| § 170:9     | Form: Petition to settle cause of action—Minor's estate (U.P.F. No. 95)  |
| § 170:10    | Form: Order to settle cause of action—Minor's estate (U.P.F. No. 96)     |
| § 170:11    | Dealing with the minor's personal property                               |
| § 170:11.50 | Dealing with the minor's interests                                       |
| § 170:12    | Guardian's authority to pay minor's funeral expense                      |
| § 170:13    | Reliance on authority of guardian, standby guardian, short-term guardian |
| § 170:14    | Exoneration of guardian of ward when acting according to law             |
| § 170:15    | Guardian's authority to donate ward's body parts                         |

## CHAPTER 171. DEALING WITH THE MINOR'S PROPERTY

|          |  |
|----------|--|
| § 171:1  | Administration of deceased ward's estate                                   |
| § 171:2  | The guardian's investments   |
| § 171:3  | Sale, lease or mortgage of ward's real estate                              |
| § 171:4  | Form: Petition to sell ward's real estate                                  |
| § 171:5  | Form: Bond for sale of real estate—Corporate surety                        |
| § 171:6  | —Individual sureties   |
| § 171:7  | Form: Order directing sale of ward's real estate                           |
| § 171:8  | Form: Report of sale of real estate  |
| § 171:9  | Form: Order approving report of sale and directing deed                    |
| § 171:10 | Form: Deed   |
| § 171:11 | Form: Petition to mortgage ward's real estate                              |
| § 171:12 | Form: Order directing mortgage of ward's real estate                       |
| § 171:13 | Form: Report of mortgage of ward's real estate and order approving         |
| § 171:14 | Sale of small real estate interest of ward                                 |
| § 171:15 | Sale, lease or mortgage of ward's personal property                        |
| § 171:16 | Form: Petition to sell personal property                                   |
| § 171:17 | Form: Notice of petition to sell personal property                         |
| § 171:18 | Form: Petition to mortgage or pledge personal property of ward             |
| § 171:19 | Form: Order setting for hearing the petition to mortgage personal property |
| § 171:20 | Form: Petition to authorize lease of personal property                     |
| § 171:21 | Form: Order approving report of sale and directing deed                    |
| § 171:22 | Form: Notice of public sale of personal property                           |
| § 171:23 | Form: Order authorizing mortgage of personal property                      |

- § 171:24 Form: Order authorizing lease of personal property of ward
- § 171:25 Form: Report of sale of personal property and order approving report

## **CHAPTER 172. REPORTS AND TERMINATING THE GUARDIANSHIP**

- § 172:1 Removal of guardian of a minor
- § 172:2 Guardian's reports and accounts
- § 172:3 Terminating the guardianship
- § 172:4 Form: Receipt of ward on final distribution (U.P.F. No. 100)
- § 172:5 Form: Affidavit of ward on guardian's final account (U.P.F. No. 101)
- § 172:6 Form: Order for payment to ward at majority (U.P.F. No. 99)
- § 172:7 Deposit of unclaimed money

## **CHAPTER 173. *[Reserved]***

## **CHAPTER 174. *[Reserved]***

## **CHAPTER 175. *[Reserved]***

# **Volume 19**

## **CHAPTER 176. THE NEED FOR A WILL**

- § 176:1 Whether or not to have a will
- § 176:2 List: Advantages of having a will
- § 176:3 List: Disadvantages of having a will
- § 176:4 Inadvertent intestacy

## **CHAPTER 177. THE NATURE OF A WILL**

- § 177:1 The definition of a will
- § 177:2 The ambulatory nature of wills
- § 177:3 The intent to make a will
- § 177:4 Determining whether a document is a will
- § 177:5 List: Rules applied in determining whether a document is a will
- § 177:6 List: Documents not normally held to be wills

## **CHAPTER 178. MAKING A VALID WILL**

- § 178:1 Assuring the validity of the will



## TABLE OF CONTENTS

|             |  |
|-------------|--|
| § 178:2     | Checklist: The requirements for a valid will                     |
| § 178:3     | The laws that govern wills                                       |
| § 178:4     | The right to make a will   |
| § 178:5     | The right of an illiterate to make a will                        |
| § 178:6     | The right of a blind person to make a will                       |
| § 178:7     | Nuncupative, holographic and soldiers' wills                     |
| § 178:8     | The need to comply with the statute of wills                     |
| § 178:9     | The right to determine the manner of distribution                |
| § 178:10    | The right to disinherit heirs                                    |
| § 178:10.50 | Rights of person with a chance to receive will or trust benefits |
| § 178:11    | Form: Statement of intention to disinherit named person          |
| § 178:12    | Determining whether an heir has been disinherited                |
| § 178:13    | The Uniform International Wills Act                              |

## CHAPTER 179. BASIC FORMS OF WILLS

|          |  |
|----------|--|
| § 179:1  | Drafting the will  |
| § 179:2  | The style used in drafting wills   |
| § 179:3  | Sources of will forms  |
| § 179:4  | Problems of the too-simple will  |
| § 179:5  | The basic will forms   |
| § 179:6  | Form: Basic form of last will and testament  |
| § 179:7  | Provisions for the surviving spouse  |
| § 179:8  | Form: Bequest of chattels to spouse, generally   |
| § 179:9  | Form: Bequest of specific chattels to spouse   |
| § 179:10 | Form: Bequest and devise of one-half of residue to spouse, with other half to children                   |
| § 179:11 | Form: Bequest and devise of one-half of residue to spouse, with other half to children and grandchildren |
| § 179:12 | The will for the couple with minor child(ren)  |
| § 179:13 | Form: Will of couple with minor child(ren)   |
| § 179:14 | The will for the couple with adult child(ren)  |
| § 179:15 | The will for couple without descendant(s)  |
| § 179:16 | Form: Will of couple without descendants   |
| § 179:17 | The will for the single parent with minor child(ren)   |
| § 179:18 | The will for divorced parent of minor child(ren)   |
| § 179:19 | The will of the single person without any descendant   |
| § 179:20 | Form: Will of single person without any descendant   |
| § 179:21 | The conditional or contingent will   |

## **CHAPTER 180. JOINT, MUTUAL, AND RECIPROCAL WILLS**

- § 180:1 Joint, mutual, and reciprocal wills, generally
- § 180:2 Reciprocal wills
- § 180:3 Form: Will provisions—Reciprocal will to be revocable
- § 180:4 Joint and mutual wills
- § 180:5 Form: Joint will of husband and wife
- § 180:6 The conflict of interest in preparing a joint and mutual will
- § 180:7 Revocation of joint and mutual wills
- § 180:8 The contract to make irrevocable wills
- § 180:9 Checklist: Points to consider for inclusion in the contract to make irrevocable wills
- § 180:10 The rights of the surviving testator in the joint and mutual will

## **CHAPTER 181. DRAFTING THE WILL**

- § 181:1 Problems in drafting the will
- § 181:2 The contents of the will
- § 181:3 Checklist: Some of the principal provisions in the will
- § 181:4 How the will is to distribute the estate
- § 181:5 Checklist: Restrictions on the testator's right to distribute his own property as he sees fit
- § 181:6 Checklist: Possible beneficiaries under the will
- § 181:7 Disposing of body or organ by will or otherwise
- § 181:8 Form: Will provision—Gift of organ for use by another
- § 181:9 —Gift of body for scientific research
- § 181:10 Burial instructions
- § 181:11 Cremation
- § 181:12 Form: Will provision—Direction that testator's body be cremated
- § 181:13 Checklist: Ways to circumvent unwanted beneficiaries
- § 181:14 Statement as to testator's heirship
- § 181:15 Form: Statement as to testator's heirship
- § 181:16 Providing for a posthumous child
- § 181:17 Form: Provision for a posthumous child
- § 181:18 Common disaster or survival clause
- § 181:19 Form: Common catastrophe clause
- § 181:20 Form: Provision requiring specified survival
- § 181:21 General directions in the will (lapse, ademption, exoneration, etc.)

## TABLE OF CONTENTS

- § 181:22 Drafting the nonresident's will
- § 181:23 Negligent drafting and execution of wills
- § 181:24 Assuring the best possible will for each person

## **CHAPTER 182. PAYMENT OF DEBTS AND TAXES**

- § 182:1 The direction for the payment of debts
- § 182:2 Form: Direction to pay debt discharged by bankruptcy
- § 182:3 Form: Direction to pay debt barred by statute of limitations
- § 182:4 The direction for the payment of taxes
- § 182:5 The direction for the payment of funeral expenses
- § 182:6 Form: Direction placing limit on funeral expenses
- § 182:7 Provision for tombstone or marker
- § 182:8 Form: Direction for erection of tombstone or marker
- § 182:9 The direction for exoneration
- § 182:10 Form: Direction that encumbered property be exonerated
- § 182:11 Directions as to equitable apportionment
- § 182:12 Form: Direction that there shall not be equitable apportionment
- § 182:13 Form: Direction that there shall be equitable apportionment

## **CHAPTER 183. BEQUESTS IN THE WILL**

- § 183:1 Bequests and devises, generally
- § 183:2 Checklist: Suggestions for drafting bequests and devises
- § 183:3 General, specific and demonstrative legacies
- § 183:4 Form: General legacy
- § 183:5 Form: Specific bequest
- § 183:6 Form: Demonstrative legacy
- § 183:7 Describing the beneficiaries
- § 183:8 Forgiving debts
- § 183:9 Form: Forgiveness of debt
- § 183:10 Bequests of personal effects
- § 183:11 Bequests of stocks and bonds
- § 183:12 Bequests to elderly beneficiaries
- § 183:13 Form: Bequest in trust for use of aged relative
- § 183:14 Form: Direction that executor purchase annuity for aged relative
- § 183:15 List: Problems in making a bequest to an elderly beneficiary

- § 183:16 Bequests to aliens
- § 183:17 Bequest subject to charge or equitable trust
- § 183:18 Bequests of property not owned by the testator

## **CHAPTER 184. DEVISES IN THE WILL**

- § 184:1 General, specific and demonstrative devises
- § 184:2 Form: Specific devise of real estate
- § 184:3 Form: General devise of real estate
- § 184:4 Form: Specific devise with alternate beneficiary
- § 184:5 Form: Specific devise of real estate to lapse with death of devisee
- § 184:6 Equitable conversion
- § 184:7 Describing the real estate
- § 184:8 Option to buy real estate
- § 184:9 The right to growing crops
- § 184:10 The devise of jointly owned real estate

## **CHAPTER 185. WILL PROVISIONS FOR DESCENDANTS**

- § 185:1 Bequests and devises to descendants, generally
- § 185:2 Effect of children born after will is signed
- § 185:3 Form: Provision for child born after execution of will
- § 185:4 The Anti-lapse Statute
- § 185:5 The testamentary guardian
- § 185:6 Form: Appointment of testamentary guardian
- § 185:7 Generation skipping
- § 185:8 Bequests and devises to minor children
- § 185:9 Trust provisions for minors
- § 185:10 Rights of posthumous children

## **CHAPTER 186. BEQUESTS TO CHURCH, CHARITY AND CORPORATIONS**

- § 186:1 Bequests to church and charity, generally
- § 186:2 Form: Unrestricted bequest to charity
- § 186:3 Form: Charitable bequest for limited purpose
- § 186:4 List: Some special rules relating to bequests to charity
- § 186:5 Validity of bequests to clergymen or church
- § 186:6 Checklist: Suggestions for drafting the charitable bequest
- § 186:7 Bequests for masses
- § 186:8 Form: Bequest for masses for testator
- § 186:9 Form: Bequest for masses for those other than testator

## TABLE OF CONTENTS

- § 186:10 Effect of change of name, purpose or ownership of beneficiary
- § 186:11 Form: Charitable bequest, to lapse upon occurrence of certain events
- § 186:12 Bequests to private corporations
- § 186:13 Bequests to bodies politic

## CHAPTER 187. CLASS GIFTS

- § 187:1 The nature of a class gift
- § 187:2 Checklist: The essential elements of a class gift
- § 187:3 Making a class gift
- § 187:4 Determining whether there is a class gift
- § 187:5 Form: Will provision—Bequest to a class
- § 187:6 —Devise to a class
- § 187:7 Determining the members of the class and their shares

## CHAPTER 188. CONDITIONS AND RESTRICTIONS ON BEQUESTS AND DEVISES

- § 188:1 The nature of conditions and restrictions on bequests and devises
- § 188:2 Impossibility of performance or invalidity of a condition
- § 188:3 The performance or breach of conditions or restrictions
- § 188:4 Conditions and restrictions on marriage, divorce and separation
- § 188:5 Form: Termination of spouse's interest upon remarriage
- § 188:6 Form: Disinheritance upon marriage before age of 21
- § 188:7 Conditions and restrictions on conveyance of property
- § 188:8 Restrictions on will contest
- § 188:9 Form: Disinheritance upon filing will contest
- § 188:10 What constitutes breach of no will contest provision
- § 188:11 Conditions and restrictions relating to religion
- § 188:12 Form: Disinheritance upon marrying outside testator's religious faith
- § 188:13 Conditions and restrictions relating to support or services for testator or others
- § 188:14 Name and arm conditions
- § 188:15 Other conditions and restrictions on bequests and devises

## **CHAPTER 189. DRAFTING TESTAMENTARY TRUSTS**

- § 189:1 Drafting testamentary trusts
- § 189:2 Checklist: Conditions that may indicate need for testamentary trust
- § 189:3 The tax-wise wills for husband and wife
- § 189:4 The marital deduction trust
- § 189:5 Determining how much to qualify for the marital deduction
- § 189:6 Checklist: Factors to consider in qualifying property for the marital deduction
- § 189:7 The pecuniary bequest marital trust
- § 189:8 Form: Marital deduction bequest—Pecuniary formula
- § 189:9 The fractional bequest marital trust
- § 189:10 Form: Marital deduction bequest—Fractional shares
- § 189:11 The Qualified Terminable Interest (QTIP) trust
- § 189:12 The general power of appointment
- § 189:13 The power of appointment exercisable in conjunction with another person
- § 189:14 Right of life income beneficiary to use principal—Ascertainable standard
- § 189:15 Generation skipping trusts

## **CHAPTER 190. DRAFTING CHARITABLE TRUSTS**

- § 190:1 Drafting charitable trusts
- § 190:2 The charitable remainder unitrust
- § 190:3 The charitable remainder annuity trust
- § 190:4 The charitable lead trust

## **CHAPTER 191. THE RESIDUARY CLAUSE**

- § 191:1 The residuary clause
- § 191:2 Form: Residuary clause
- § 191:3 —Alternate beneficiaries
- § 191:4 Property included in the residuary estate
- § 191:5 Use of percentages or fractions instead of specific dollar amounts
- § 191:6 Form: Residue divided among beneficiaries in fractions
- § 191:7 Form: Legacy limited to specified portion of estate
- § 191:8 The effect of partial intestacy
- § 191:9 The pourover provision
- § 191:10 Form: Pourover provision

TABLE OF CONTENTS

§ 191:11 —Alternative form

**CHAPTER 192. SELECTING THE EXECUTOR**

- § 192:1 Selecting the executor
- § 192:2 The qualifications of the executor
- § 192:3 The nonresident executor
- § 192:4 When the person not qualified as executor becomes qualified
- § 192:5 The effect of the failure to qualify, death, resignation or removal of the executor
- § 192:6 List: The advantages of a corporate executor
- § 192:7 List: The disadvantages of a corporate executor
- § 192:8 Form: Nomination of corporate executor
- § 192:9 The alternate executor
- § 192:10 Form: Power of executor to nominate a successor
- § 192:11 Form: Nomination by executor of successor pursuant to power in the will
- § 192:12 List: The advantages of co-executors
- § 192:13 List: The disadvantages of co-executors
- § 192:14 The attorney as executor
- § 192:15 List: The advantages of appointing testator's attorney as executor
- § 192:16 List: The disadvantages of appointing testator's attorney as executor

**CHAPTER 193. THE POWERS OF THE EXECUTOR**

- § 193:1 The powers of the executor, generally
- § 193:2 The attorney for the executor
- § 193:3 Form: Direction that executor retain the services of testator's attorney
- § 193:4 Negligence of representative in selecting an attorney
- § 193:5 Surety on the executor's bond
- § 193:6 Self-dealing by the executor
- § 193:7 Form: Authority of executor to self-deal
- § 193:8 Powers of the executor before the issuance of letters
- § 193:9 Executor's control of real estate
- § 193:10 Form: Direction to executor to take control of real estate
- § 193:11 Form: Direction that devisee shall take immediate possession of real estate
- § 193:12 Sale of decedent's real estate
- § 193:13 Form: Power of executor to sell real estate

- § 193:14 Form: Direction to executor to sell real estate  
(equitable conversion)
- § 193:15 Mortgaging decedent's real estate
- § 193:16 Form: Power of executor to borrow against real  
estate
- § 193:17 Executor's control of personal estate
- § 193:18 Form: Power of executor to mortgage, pledge, sell or  
lease personal estate
- § 193:19 Investments by executor
- § 193:20 Form: Power of executor to retain decedent's assets
- § 193:21 Form: Authority to delay distributions
- § 193:22 Authority to operate business
- § 193:23 Powers and duties to make tax elections
- § 193:24 Other powers and duties of the executor
- § 193:25 Form: Miscellaneous additional powers of executor

## **CHAPTER 194. SPECIAL WILL DRAFTING PROBLEMS**

- § 194:1 Special will drafting problems
- § 194:2 Use of precatory words
- § 194:3 Form: Statement that words are precatory and not  
binding
- § 194:4 Libel by will
- § 194:5 Incorporation by reference—Lists
- § 194:6 The dangerous beneficiary
- § 194:7 Form: Disinheriting beneficiary responsible for  
testator's death by criminal act

## **CHAPTER 195. THE RULE AGAINST PERPETUITIES AND UNREASONABLE ACCUMULATIONS**

- § 195:1 The Rule Against Perpetuities
- § 195:2 Form: Provision that no beneficiary shall take any  
interest in violation of Rule Against Perpetuities
- § 195:3 The inapplicability of the Rule Against Perpetuities to  
certain situations
- § 195:4 The Qualified Perpetual Trust
- § 195:5 Form: Provision that trust is to be exempt from Rule  
Against Perpetuities as Qualified Perpetual Trust
- § 195:6 The termination and distribution of trusts that  
violate the Rule Against Perpetuities
- § 195:7 The rule against unreasonable accumulations of  
income
- § 195:8 Form: Limit on accumulation of income in violation of  
Thellusson's Act



TABLE OF CONTENTS

**CHAPTER 196. KEEPING THE WILL FAR-SIGHTED**

- § 196:1 The effect of subsequent events on the will
- § 196:2 Lapsed bequests and devises
- § 196:3 Void bequests and devises
- § 196:4 Renunciation
- § 196:5 Disclaimers
- § 196:6 Ademption
- § 196:7 Advancements
- § 196:8 Elections
- § 196:9 Abatement
- § 196:10 Accretions
- § 196:11 Changes in program or ownership of beneficiary
- § 196:12 Successful will contest

**CHAPTER 197. EXECUTING THE WILL**

- § 197:1 Executing the will
- § 197:2 Checklist: Precautions in executing a valid will
- § 197:3 Sufficiency of signature
- § 197:3.50 Electronic signing of will and of nontestamentary estate planning documents
- § 197:4 Signature by mark or by another
- § 197:5 Form: Attestation clause—Testator signs by mark
- § 197:6 —Another person signs for testator
- § 197:7 The name used by the testator
- § 197:8 Testator's knowledge of contents of will
- § 197:9 Executing duplicate wills

**CHAPTER 198. PUBLICATION AND ATTESTATION OF THE WILL**

- § 198:1 Publication of will
- § 198:2 Attestation of will
- § 198:2.50 Attestation of electronic will
- § 198:3 The attestation clause
- § 198:4 The request to sign as witness
- § 198:5 Acknowledgment by testator
- § 198:6 Competency of witnesses
- § 198:7 The notary public as a witness
- § 198:8 Interest of witnesses
- § 198:9 Signing by witnesses
- § 198:10 The affidavit of attesting witnesses

## **CHAPTER 199. THE MENTAL CAPACITY OF THE TESTATOR**

- § 199:1 Mental capacity to make a will
- § 199:2 The definition of mental capacity
- § 199:3 Insane delusions
- § 199:4 Ability of disabled (incompetent) adult to make a valid will
- § 199:5 The effect of old age, senility or illness
- § 199:6 The effect of alcohol or drugs
- § 199:7 List: Facts which do not necessarily preclude testamentary capacity

## **CHAPTER 200. FRAUD, DURESS, AND UNDUE INFLUENCE IN EXECUTING THE WILL**

- § 200:1 The problems of fraud, duress and undue influence, generally
- § 200:2 Fraud
- § 200:3 Duress or compulsion
- § 200:4 Undue influence
- § 200:5 List: Facts which do not necessarily constitute undue influence
- § 200:6 The presumption of undue influence
- § 200:7 Rebutting the presumption of undue influence
- § 200:8 The application of the presumption of undue influence to the spousal relationship
- § 200:9 The existence of a fiduciary relationship
- § 200:10 List: Relationships which do not, standing alone, create a fiduciary relationship
- § 200:11 Avoiding undue influence
- § 200:12 The partial invalidity of a will
- § 200:13 The lawyer and his relatives as beneficiaries

## **CHAPTER 201. THE CONTEST-PRONE WILL**

- § 201:1 The “contest-prone” will
- § 201:2 List: Warning signals for the contest-prone will
- § 201:3 Checklist: Special precautions for the contest-prone will
- § 201:4 How clients can help avoid successful will contests

## **CHAPTER 202. AFTER THE WILL IS SIGNED**

- § 202:1 A letter to accompany the will

## TABLE OF CONTENTS

|          |  |
|----------|--|
| § 202:2  | Form: Sample of letter to accompany will   |
| § 202:3  | Checklist: Matters to be covered in letter supplementing the will                    |
| § 202:4  | Safeguarding the will and estate papers  |
| § 202:5  | Recording the will during testator's lifetime  |
| § 202:6  | Checklist: Ways to prevent unauthorized changes in the will                          |
| § 202:7  | Checklist: Ways to avoid loss of the will  |
| § 202:8  | Keeping the will up to date  |
| § 202:9  | Disposing of clients' wills upon the death or retirement of the lawyer who drew them |
| § 202:10 | Duty to file will immediately after death of testator                                |
| § 202:11 | Deposit of unclaimed wills   |

## CHAPTER 203. CODICILS

|         |                         |
|---------|-------------------------|
| § 203:1 | The nature of a codicil |
| § 203:2 | The use of a codicil    |
| § 203:3 | Form: Codicil to will   |

## CHAPTER 204. ALTERATION AND REVOCATION OF A WILL

|            |  |
|------------|--|
| § 204:1    | Acts that may revoke a will                                |
| § 204:1.50 | Revocation of electronic will                              |
| § 204:2    | Revocation by execution of later instrument                |
| § 204:3    | Form: Instrument revoking will                             |
| § 204:4    | Effect of testator's incapacity when executing later will  |
| § 204:5    | Implied revocation of a will by a later will               |
| § 204:6    | Implied revocation of a will by a codicil                  |
| § 204:7    | The doctrine of dependent relative revocation              |
| § 204:8    | Effect of alterations on the will                          |
| § 204:9    | Revocation by tearing or other physical damage to the will |
| § 204:10   | Revocation of will by marriage                             |
| § 204:11   | Revocation of will by divorce                              |
| § 204:12   | Revocation of will by birth or adoption of child           |

## CHAPTER 205. REVIVAL AND REPUBLICATION OF WILL

|         |   |
|---------|---|
| § 205:1 | Revival of wills                                    |
| § 205:2 | Revocation of later will as revival of earlier will |
| § 205:3 | How the will is revived                             |

## **CHAPTER 206. WILL CONTESTS**

### **A. PRELIMINARY CONSIDERATIONS**

- § 206:1 The problems of will contests
- § 206:2 Dealing with the threat of an unfounded will contest
- § 206:3 The actions of interested persons pending outcome of appeal of order admitting or denying admission of will, or disposition of contest of order
- § 206:4 Persons who may file a will contest
- § 206:5 The assignability of the right to contest a will
- § 206:6 The survival of the right to contest admission or denial of admission of will
- § 206:7 Estoppel to contest will
- § 206:8 Duty of representative to defend contest of admission of will to probate
- § 206:9 Settlement of will contests
- § 206:10 The rights of non-contesting heirs
- § 206:11 Preparing to file a will contest

### **B. THE ACTION TO CONTEST A WILL**

- § 206:12 The contest of the admission of the will to probate
- § 206:13 Joinder of other actions with will contest
- § 206:14 The time for filing the will contest
- § 206:15 List: Interested persons who may file a petition to contest admission or denial of admission of will to probate
- § 206:16 Place of filing will contest
- § 206:17 The petition to contest the will
- § 206:18 Necessary parties to the will contest
- § 206:19 Addition of omitted parties and other amendments to pleading

### **C. NOTICE**

- § 206:20 Notice of will contest
- § 206:21 Notice by publication to unknown heirs
- § 206:22 Right to jury trial

### **D. DISCOVERY IN A WILL CONTEST**

- § 206:23 Discovery in will contests

### **E. ESTATE TAX CONSEQUENCES OF A WILL CONTEST**

- § 206:24 Federal estate tax consequences of will contest

## TABLE OF CONTENTS

- § 206:25 Illinois estate tax consequences of successful will contest

## **F. SUMMARY JUDGMENT IN A WILL CONTEST**

- § 206:26 Summary judgment in will contests
- § 206:27 Affidavits in support of and in opposition to motion for summary judgment

## **G. ATTORNEY FEES IN A WILL CONTEST**

- § 206:28 Attorneys' fees in will contests

## **CHAPTER 207. THE CONTEST OF THE DENIAL OF ADMISSION OF WILL TO PROBATE**

- § 207:1 The right to contest denial of admission of will to probate
- § 207:2 The petition to contest denial of admission of will to probate
- § 207:3 The parties to the petition to contest denial of admission of will to probate
- § 207:4 The right to appear and introduce evidence
- § 207:5 The right to trial by jury
- § 207:6 The order of proof
- § 207:7 Survival of right to contest denial of admission of will to probate
- § 207:8 Duty of representative to defend contest of denial of admission of will to probate
- § 207:9 Duty of named executor to support contest of denial of admission of will to probate
- § 207:10 The admissibility of evidence
- § 207:11 The procedures in the contest of the denial of admission of will to probate

## **CHAPTER 208. GROUNDS FOR CONTESTING A WILL**

- § 208:1 The grounds for contesting a will
- § 208:2 Checklist: Possible grounds for contesting a will
- § 208:3 Testator's minority
- § 208:4 Lack of proper execution
- § 208:5 Will improperly signed in testator's behalf
- § 208:6 Failure of testator to know contents of will
- § 208:7 Lack of proper attestation
- § 208:8 Revocation of will

- § 208:9 Execution of later will
- § 208:10 Forgery
- § 208:11 Fraud
- § 208:12 Duress or compulsion
- § 208:13 Mistake
- § 208:14 Undue influence
- § 208:15 Lack of testamentary capacity

## **CHAPTER 209. PROCEDURES IN WILL CONTESTS**

- § 209:1 The trial of a will contest
- § 209:2 The issues in a will contest
- § 209:3 IPI 200.01A: Will Contest—Issues Made by the Pleadings—Entire Will Claimed Invalid
- § 209:4 IPI 200.01B: Will Contest—Issues Made by the Pleadings—Partial Invalidity Claimed
- § 209:5 Questions of law and fact
- § 209:6 Amendment of pleadings after summary judgment in will contents
- § 209:7 The burden of proof
- § 209:8 IPI 200.02A: Will Contest—Burden of Proof—Entire Will Claimed Invalid
- § 209:9 IPI 200.02B: Will Contest—Burden of Proof—Partial Invalidity Claimed
- § 209:10 Presumptions
- § 209:11 List: Some presumptions that apply in will contests
- § 209:12 The order and sufficiency of proof in contest of admission of will to probate
- § 209:13 Directed verdicts
- § 209:14 Closing arguments

## **CHAPTER 210. EVIDENCE IN WILL CONTESTS**

- § 210:1 The admissibility of evidence in will contests
- § 210:2 The relevancy of evidence
- § 210:3 Evidence of mental capacity
- § 210:4 List: Evidence admissible on issue of mental capacity
- § 210:5 Admissibility of adjudication of incompetency
- § 210:6 The provisions of the will as evidence of mental capacity
- § 210:7 The testimony of subscribing witnesses
- § 210:8 Nonexpert opinion evidence
- § 210:9 Expert opinion evidence

## TABLE OF CONTENTS

|          |                                      |
|----------|--------------------------------------|
| § 210:10 | Testimony of the testator's attorney |
| § 210:11 | Testimony as to undue influence      |
| § 210:12 | Declarations of testator             |
| § 210:13 | Admissibility of earlier wills       |
| § 210:14 | The Dead Man's Act                   |
| § 210:15 | Evidence in forgery cases            |

## **CHAPTER 211. JURY INSTRUCTIONS, VERDICTS AND JUDGMENTS IN WILL CONTESTS**

|          |   |
|----------|---|
| § 211:1  | Jury instructions, generally  |
| § 211:2  | IPI 200.07: Testator's Right to Dispose of Property   |
| § 211:3  | IPI 200.08: Natural Objects of Bounty—Definition  |
| § 211:4  | Jury instructions—Mental capacity   |
| § 211:5  | IPI 200.05: Will Contest—Testamentary Capacity—<br>Definition   |
| § 211:6  | IPI 200.10: Testamentary Capacity—Personal<br>Characteristics of Decedent   |
| § 211:7  | IPI 200.06: Testimony of Physician  |
| § 211:8  | IPI 200.11: Testamentary Capacity—Effect of Prior<br>Adjudication of Mental Incapacity                                      |
| § 211:9  | Jury instructions—Undue influence   |
| § 211:10 | IPI 200.09: Undue Influence—Definition  |
| § 211:11 | IPI 200.03: Will Contest—Undue Influence Based<br>Entirely on Unrebutted Presumption Arising From<br>Fiduciary Relationship |
| § 211:12 | IPI 200.04: Will Contest—Undue Influence—Proof of<br>Specific Conduct and Presumption From Fiduciary<br>Relationship        |
| § 211:13 | IPI 200.03.05: Meaning of Burden of Proof—<br>Presumption of Undue Influence—Fiduciary<br>Relationship Must Be Proved       |
| § 211:14 | The verdict   |
| § 211:15 | IPI 200.12: Instruction on Verdict Forms—Entire<br>Invalidity Claimed   |
| § 211:16 | IPI 200.13: Verdict Form A—For the Will—Entire<br>Invalidity Claimed But Not Found  |
| § 211:17 | IPI 200.14: Verdict Form B—Against the Will—<br>Entire Invalidity Found   |
| § 211:18 | IPI 200.15: Instruction on Verdict Forms—Partial<br>Invalidity  |
| § 211:19 | IPI 200.16: Verdict Form—Partial Invalidity Found   |
| § 211:20 | IPI 200.17: Verdict Form—Partial Invalidity<br>Found—Will Invalid   |
| § 211:21 | IPI 200.18: Verdict Form—Partial Invalidity<br>Claimed But Not Found  |

- § 211:22 The judgment
- § 211:23 Post-trial motions

## **CHAPTER 212. THE KINDS AND USES OF TRUSTS**

- § 212:1 The nature of the express trust
- § 212:2 List: The kinds of trusts
- § 212:3 List: The advantages of trusts
- § 212:4 List: The disadvantages of trusts
- § 212:5 The testamentary trust
- § 212:6 The living or inter vivos trust
- § 212:7 The irrevocable trust
- § 212:8 Form: Trust provision—Irrevocable trust
- § 212:9 —Release of power to amend or revoke the trust
- § 212:10 The revocable trust
- § 212:11 Form: Trust provision—Power to revoke, amend, etc., the trust
- § 212:12 Trusts by operation of law
- § 212:13 Joint, mutual or reciprocal trusts
- § 212:14 Trust to receive proceeds of eminent domain or partition proceeding
- § 212:15 Trust to conserve property
- § 212:16 The trust distinguished from an escrow
- § 212:17 Total return trusts
- § 212:18 Trusts for domestic or pet animals
- § 212:19 The assignment for the benefit of creditors as a trust arrangement

## **CHAPTER 212A. REVOCABLE TRUSTS UNDER THE ILLINOIS TRUST CODE**

- § 212A:1 Capacity of settlor of revocable trust
- § 212A:2 Revocation or amendment of revocable trust
- § 212A:3 Settlor's powers; powers of withdrawal
- § 212A:4 Limitation on action contesting validity of revocable trust; distribution of trust property
- § 212A:5 Revocation of provisions in revocable trust by divorce or annulment

## **CHAPTER 212B. TOTAL RETURN TRUSTS UNDER THE ILLINOIS TRUST CODE**

- § 212B:1 Total return trust defined; trustee duty to inform
- § 212B:2 Conversion by trustee
- § 212B:3 Conversion by agreement



## TABLE OF CONTENTS

|           |                                     |
|-----------|-------------------------------------|
| § 212B:4  | Conversion or reconversion by court |
| § 212B:5  | Post conversion                     |
| § 212B:6  | Administration                      |
| § 212B:7  | Allocations                         |
| § 212B:8  | Restrictions                        |
| § 212B:9  | Tax limitations                     |
| § 212B:10 | Releases                            |
| § 212B:11 | Remedies                            |
| § 212B:12 | Application                         |
| § 212B:13 | Application to express trusts       |

## CHAPTER 213. CREATING AND AMENDING A VALID EXPRESS TRUST

|            |  |
|------------|--|
| § 213:1    | Creating a valid express trust   |
| § 213:2    | The capacity of the grantor  |
| § 213:3    | The intention to create a trust  |
| § 213:3.50 | Effect of fraud, duress, mistake, or undue influence                       |
| § 213:4    | The need for consideration   |
| § 213:5    | The need for a written instrument  |
| § 213:6    | The express oral trust of personal property                                |
| § 213:7    | The witnessing or acknowledgement of the trust instrument                  |
| § 213:8    | Proof of existence of express trust  |
| § 213:9    | List: Reasons for putting a trust instrument in writing                    |
| § 213:10   | The propriety of the trust purpose   |
| § 213:11   | The effect of the violation of the Rule Against Perpetuities               |
| § 213:12   | The effect of the violation of the Rule Against Unreasonable Accumulations |
| § 213:13   | The effect of illegal consideration  |
| § 213:14   | The consequences when the trust purpose is illegal                         |
| § 213:15   | The effect of the impossibility of the performance of the trust            |
| § 213:16   | The effect of the indefiniteness of the trust                              |
| § 213:17   | The self-declaration of trust  |
| § 213:18   | Form: Declaration of trust—Revocable—Corporate stock                       |
| § 213:19   | The grantor's retained interests   |
| § 213:20   | The Statute of Uses  |
| § 213:21   | Active and passive trusts  |
| § 213:22   | List: When the trustee's duties are considered active                      |
| § 213:23   | Amending the trust agreement   |

## **CHAPTER 214. THE TRUST PROPERTY AND ESTATES AND INTERESTS THEREIN**

- § 214:1 The trust property
- § 214:2 Funding the trust
- § 214:3 Transfers to the trust
- § 214:4 Future additions to the trust
- § 214:5 Testamentary additions to trusts
- § 214:6 Insurance and other benefits payable to  
testamentary trustee
- § 214:7 Vesting of trust assets in a successor trustee
- § 214:8 The estates and interests of the trustee
- § 214:9 Following trust property
- § 214:10 Where trust property or funds are commingled
- § 214:11 The rights and duties of third persons dealing  
with the trust
- § 214:11.50 Certification of trust
- § 214:11.60 —form
- § 214:12 Right of creditors to reach trust property
- § 214:12.50 —Trust for beneficiary with a disability

## **CHAPTER 215. THE TRUST BENEFICIARIES**

- § 215:1 The beneficiaries of the trust
- § 215:2 Who may be beneficiaries of a trust
- § 215:3 Beneficiaries who are not ascertainable or in  
being at the time the trust is created
- § 215:4 Plural and successive beneficiaries
- § 215:5 Designating the beneficiaries by class
- § 215:6 Whether beneficiaries take as a class or as  
individuals
- § 215:7 The power of the trustee to select from a class
- § 215:8 Notice to, and acceptance by, the beneficiaries
- § 215:9 The rights of beneficiaries
- § 215:10 The rights of income beneficiaries
- § 215:11 The rights and duties of beneficiaries among  
themselves
- § 215:12 The estates and interests of the beneficiaries
- § 215:13 The transfer and assignment of a beneficiary's  
interest
- § 215:14 Restrictions on voluntary and involuntary  
transfers—Spendthrift provisions
- § 215:15 Representation—Basic effect
- § 215:15.10 —Representative designated in trust instrument
- § 215:15.20 —Representative not designated in trust instrument

## TABLE OF CONTENTS

- § 215:15.30 —Representation of charity
- § 215:15.40 —Appointment of representative
- § 215:16 Death of trust beneficiary as “lapse” of the benefit

## CHAPTER 216. THE TRUSTEE

- § 216:1 Selecting the trustee
- § 216:2 List: Advantages of selecting a corporate trustee
- § 216:3 List: Disadvantages of selecting a corporate trustee
- § 216:3.50 Co-trustees
- § 216:4 List: Reasons for using co-trustees
- § 216:5 List: Disadvantages of using co-trustees
- § 216:6 Checklist: Reasons the surviving spouse should be the trustee
- § 216:7 Checklist: Reasons the surviving spouse should not be the trustee
- § 216:8 The qualifications of the trustee
- § 216:9 Acceptance by trustee
- § 216:10 The trustee’s bond
- § 216:11 The appointment of a trustee by one other than the settlor
- § 216:12 Resignation by trustee
- § 216:13 Removal of trustee
- § 216:14 The successor trustee
- § 216:15 Form: Trust provision—Method of selecting successor trustee
- § 216:16 —Successor corporate trustee
- § 216:17 Vesting title to trust property in a new trustee
- § 216:18 Selecting a trustee in other states
- § 216:19 The attorney for the trustee
- § 216:20 Several trustees
- § 216:21 The power of the surviving trustee(s)

## CHAPTER 217. THE POWERS OF THE TRUSTEE

- § 217:1 Powers of trustees, generally
- § 217:1.50 Discretionary powers of the trustee
- § 217:2 Implied powers of trustees
- § 217:3 Statutory powers of trustees—Trusts created before October 1, 1973
- § 217:4 —Trusts created after September 30, 1973
- § 217:4.50 General powers of the trustee under the Illinois Trust Code

## ESTATE PLANNING AND ADMINISTRATION

- § 217:4.60 Specific powers of the trustee under the Illinois Trust Code
- § 217:5 Conferring additional powers on the trustee
- § 217:6 Checklist: Additional powers not conferred by Trust and Trustees Act
- § 217:7 The power to sell trust property
- § 217:8 The power to grant options
- § 217:9 The power to exchange trust property
- § 217:10 The power to lease trust property
- § 217:11 The power to borrow money
- § 217:12 The power to execute mortgages and other liens
- § 217:13 The power to grant easements
- § 217:14 The power to subdivide and improve real estate
- § 217:15 The power to dedicate interests in real estate
- § 217:16 The power to give consents and enter into contracts relating to real estate
- § 217:17 The power to designate a trustee in another jurisdiction
- § 217:18 The power to enter into agreements for deposit accounts and deposit boxes
- § 217:19 The power to enter into agreements for custodian, agency or depositary arrangement
- § 217:20 The power to vote shares and execute proxies
- § 217:21 The power to participate in voting trusts, mergers, etc
- § 217:22 The power to exercise or sell subscription or conversion rights
- § 217:23 The power to incur and pay expenses in administering the trust estate
- § 217:24 The power to appoint attorneys, auditors, advisors and agents
- § 217:25 The power to delegate rights, powers and duties to a co-trustee
- § 217:26 The power to prosecute claims
- § 217:27 The power to contest claims
- § 217:28 The power to compromise claims
- § 217:29 The power to submit claims to arbitration
- § 217:30 The power to execute contracts, notes and other instruments
- § 217:31 The power to receive and administer additional trust property
- § 217:32 The power to hold undivided fractional interests in property
- § 217:33 The power to deal with self in other capacities
- § 217:34 The power to make distributions in cash or in kind

## TABLE OF CONTENTS

|          |   |
|----------|---|
| § 217:35 | The power to rely upon affidavits and other documents in making distributions |
| § 217:36 | The power to take steps to wind up the trust after its termination            |
| § 217:37 | The power to insure trust property  |
| § 217:38 | The power to make distributions to or for the benefit of beneficiaries        |
| § 217:39 | The power to invest property  |
| § 217:40 | The power to register securities in the name of a nominee                     |
| § 217:41 | The power to pay himself reasonable compensation                              |
| § 217:42 | The power of the trustee appointed in eminent domain proceedings              |
| § 217:43 | The control of the trustee's discretionary powers                             |
| § 217:44 | The power of the trustee to operate a farm                                    |
| § 217:45 | The power of the trustee to develop oil, gas and other minerals               |
| § 217:46 | The power of the trustee to operate an unincorporated business                |
| § 217:47 | The power of the trustee to continue a partnership business                   |
| § 217:48 | Severance and consolidation of trusts   |

## CHAPTER 218. THE DUTIES AND LIABILITIES OF THE TRUSTEE

|            |   |
|------------|---|
| § 218:1    | The duties of the trustee, generally  |
| § 218:2    | Form: Trust provision—Statutory powers of trustee                                   |
| § 218:3    | The liability of the trustee for breach of duty                                     |
| § 218:3.10 | Effect of exculpatory language in trust instrument                                  |
| § 218:3.50 | Remedies for breach of trust  |
| § 218:3.60 | Damages for breach of trust   |
| § 218:3.70 | Attorney's fees and costs   |
| § 218:3.80 | Limitation on actions against trustee   |
| § 218:4    | The liability of the trustee for distributions to person other than the beneficiary |
| § 218:5    | The liability of the trustee for distributions under an invalid trust               |
| § 218:6    | The liability of the trustee for breach of trust by co-trustee                      |
| § 218:7    | The effect of exculpatory provisions in the trust instrument                        |
| § 218:8    | The delegation of duties by the trustee   |
| § 218:9    | The liability of the trustee for the acts of agents                                 |
| § 218:10   | The duty to comply with the terms of the trust                                      |

|             |  |
|-------------|--|
| § 218:11    | The duty to know and understand the terms of the trust                   |
| § 218:12    | The duty to act in good faith  |
| § 218:13    | Permissible conflicts of interest  |
| § 218:14    | The duty to use care, skill and diligence                                |
| § 218:15    | The duty to take and keep control of the trust property                  |
| § 218:16    | The duty to preserve the trust property                                  |
| § 218:17    | The duty to have adequate insurance                                      |
| § 218:18    | The duty to keep trust property in repair                                |
| § 218:19    | The duty to enforce claims   |
| § 218:20    | The duty to defend against claims  |
| § 218:21    | The duty to refrain from self-dealing                                    |
| § 218:22    | Form: Trust provision—Authority of trustee to self-deal                  |
| § 218:23    | The duty to keep trust assets separate—Commingling                       |
| § 218:24    | The duty to make the trust productive                                    |
| § 218:25    | The duty to keep books and records                                       |
| § 218:26    | The duty to account to the trust beneficiaries                           |
| § 218:26.50 | —Retrospective   |
| § 218:27    | The accounting by the trustee  |
| § 218:28    | The accounting by the representative of the estate of a deceased trustee |
| § 218:29    | The suit for an accounting   |
| § 218:30    | The duty to give information to the trust beneficiaries                  |
| § 218:31    | The duty to pay income to the beneficiary                                |
| § 218:32    | The duty to deal fairly with the trust beneficiaries                     |
| § 218:33    | Actual fraud by the trustee  |
| § 218:34    | The duty of loyalty among several trust beneficiaries                    |
| § 218:35    | The effect of approval by the donor or the beneficiaries                 |
| § 218:36    | The effect of laches by the beneficiary                                  |
| § 218:37    | The liability of the trustee to third persons                            |
| § 218:38    | The liability of the trustee for torts                                   |
| § 218:39    | The release of the trustee   |
| § 218:40    | The right of the trustee to indemnification                              |
| § 218:41    | Crimes and offenses by the trustee                                       |

## CHAPTER 219. THE COMPENSATION OF THE TRUSTEE

|         |  |
|---------|--|
| § 219:1 | The right of the trustee to compensation |
| § 219:2 | Loss of right to compensation            |

## TABLE OF CONTENTS

- § 219:3 The amount of the trustee's compensation
- § 219:4 The effect of the death, resignation or removal of the trustee

## CHAPTER 220. DRAFTING TRUSTS AND SPECIAL TRUST PROVISIONS

- § 220:1 Making the best use of trusts
- § 220:2 Sources of trust forms
- § 220:3 The use of multiple trusts
- § 220:4 Drafting the "Dynasty Trust"—Exempt from the Rule Against Perpetuities
- § 220:5 Drafting a sprinkling/spray trust
- § 220:6 Form: Trust provision—Authority of trustee to sprinkle trust
- § 220:7 Drafting a spendthrift trust
- § 220:8 Form: Trust provision—Spendthrift trust
- § 220:9 Drafting an incentive trust
- § 220:10 Form: Trust provision—Incentive trust
- § 220:11 Drafting an accumulation trust
- § 220:12 Drafting a living trust for a single person
- § 220:13 Drafting the marital deduction provisions of living trusts
- § 220:14 Drafting the Qualified Terminable Interest (QTIP) provisions of living trusts
- § 220:15 Drafting the Generation Skipping Transfer provisions of living trusts
- § 220:16 Drafting life insurance trusts
- § 220:17 Drafting trusts for the benefit of minors
- § 220:18 Drafting Crummey trusts
- § 220:19 Drafting discretionary trusts for persons with disabilities
- § 220:20 The negligent drafting of trusts
- § 220:21 Helping the client realize maximum benefits from living trusts
- § 220:22 Directed trusts

## CHAPTER 221. USING THE LIVING TRUST

- § 221:1 The use of the living trust, generally
- § 221:2 Checklist: Situations where a living trust is particularly desirable
- § 221:3 Checklist: Special benefits of the living trust
- § 221:4 Checklist: Special disadvantages of the living trust
- § 221:5 Creating the living trust
- § 221:6 Form: Living trust agreement

- § 221:7 Checklist: Steps in setting up the living trust
- § 221:8 The family estate trust
- § 221:9 Administering the living trust
- § 221:10 Checklist: Procedure in administering the living trust
- § 221:11 Distributing the trust principal
- § 221:12 The Standby Living Trust
- § 221:13 Revoking the inter vivos trust
- § 221:14 Actions to set aside revocable living trusts
- § 221:15 The unethical marketing of living trusts
- § 221:16 A living trust protocol of Illinois Bar Association
- § 221:17 The illegal preparation of living trusts

## **CHAPTER 222. MANAGING AND INVESTING THE TRUST PROPERTY**

- § 222:1 The problems of managing the trust property
- § 222:2 Controlling and protecting the trust property
- § 222:3 Insuring the trust property
- § 222:4 Investing the trust property
- § 222:5 Registering securities in the name of a nominee
- § 222:6 The Prudent Investor Rule
- § 222:7 The effect of trust provisions relating to trust investments
- § 222:8 Form: Trust provision—Power of trustee to make investments—Prudent Investor Rule
- § 222:9 — —More liberal rule
- § 222:10 —Power of trustee to retain original trust investments
- § 222:11 The duty to dispose of improper investments
- § 222:12 The liability of a trustee for an imprudent sale
- § 222:13 When a proper investment subsequently becomes improper
- § 222:14 The duty to diversify investments
- § 222:15 The portfolio theory of investments
- § 222:16 Investments in common trust funds
- § 222:17 The effect of the beneficiary's approval of an improper investment
- § 222:18 Selling trust property
- § 222:19 Selling real estate held by the trust

## **CHAPTER 223. PRINCIPAL AND INCOME PROBLEMS**

- § 223:1 Principal and income problems, generally
- § 223:2 The Principal and Income Act



## TABLE OF CONTENTS

|          |   |
|----------|---|
| § 223:3  | The applicability of the Principal and Income Act of 1981   |
| § 223:4  | Changes in apportionment of principal and income directed by trust instrument                       |
| § 223:5  | The equitable adjustment doctrine   |
| § 223:6  | The proper administration of the trust  |
| § 223:7  | The meaning of terms used in the Principal and Income Act   |
| § 223:8  | The meaning of income under the Principal and Income Act  |
| § 223:9  | The meaning of principal under the Principal and Income Act   |
| § 223:10 | When the right to income arises   |
| § 223:11 | The right to income earned prior to decedent's death  |
| § 223:12 | The right to income upon the termination of the income beneficiary's interest                       |
| § 223:13 | Payment of income to qualify for marital deduction  |
| § 223:14 | The effect of a spendthrift provision   |
| § 223:15 | The effective date of corporate distributions   |
| § 223:16 | The treatment of income and expenses in decedent's estates  |
| § 223:17 | The treatment of certain corporate distributions, generally   |
| § 223:18 | The treatment of stock dividends, splits and rights   |
| § 223:19 | The treatment of distributions pursuant to calls, reorganizations and liquidation                   |
| § 223:20 | The treatment of dividends paid by regulated investment companies and real estate investment trusts |
| § 223:21 | The treatment of premium and discount on bonds and other obligations                                |
| § 223:22 | The treatment of profits and losses from business and farm operations                               |
| § 223:23 | The treatment of increase of farm animals   |
| § 223:24 | The treatment of proceeds of mineral rights   |
| § 223:25 | The treatment of the proceeds of natural resources other than mineral rights                        |
| § 223:26 | The treatment of receipts from property subject to depletion  |
| § 223:27 | The treatment of proceeds of nonproductive or underproductive property                              |
| § 223:28 | Employment related periodic payments  |
| § 223:29 | The charges to be made against income   |
| § 223:30 | The charges to be made against principal  |
| § 223:31 | The treatment of income and expenses of non-trust life estates                                      |

## **CHAPTER 224. *[Reserved]***

## **CHAPTER 225. THE CONSTRUCTION, MODIFICATION AND RESCISSION OF TRUSTS**

- § 225:1 The problems of modifying, construing and contesting trusts, generally
- § 225:2 Modifications of the trust by the grantor
- § 225:3 Modifying a trust where the power of modification was omitted by mistake
- § 225:4 Modifications of the trust by the court
- § 225:5 The right to anticipate income for the support of a beneficiary
- § 225:6 The construction of trusts
- § 225:7 The judicial construction of trusts
- § 225:8 The rules for construing trusts
- § 225:9 Law applicable to construction of trust
- § 225:10 The action to rescind an inter vivos trust
- § 225:11 The time for the action to rescind an inter vivos trust
- § 225:12 Rescinding the trust because of the incapacity of the grantor
- § 225:13 Rescinding the trust because of failure of consideration
- § 225:14 Rescinding the trust because of fraud
- § 225:15 Rescinding the trust because of duress
- § 225:16 Rescinding the trust because of undue influence
- § 225:17 Rescinding the trust because of mistake
- § 225:18 The ademption of benefits provided by a trust
- § 225:19 The “lapse” of gifts to a deceased beneficiary trust

## **CHAPTER 226. COURT CONTROL AND SUPERVISION OF TRUSTS**

- § 226:1 The court supervision of trusts
- § 226:1.50 Jurisdiction over trustee and beneficiary
- § 226:1.60 Venue
- § 226:1.70 Applicable law
- § 226:2 Checklist: Grounds for court supervision
- § 226:3 Checklist: Ways to avoid court supervision of trusts
- § 226:4 The procedure in court supervision of trusts
- § 226:5 Allowance of attorneys’ fees and costs in actions against the trustee

## TABLE OF CONTENTS

§ 226:6            Actions to enforce express trust

### **CHAPTER 227. COURT APPOINTMENT AND REMOVAL OF TRUSTEES**

§ 227:1            The court appointment of a trustee  
§ 227:2            The appointment of a trustee for lands subject to  
                     future interest or power of appointment  
§ 227:3            The procedure for the court appointment of a  
                     trustee  
§ 227:4            Form: Petition to appoint trustee  
§ 227:5            Considerations in the court appointment of a  
                     trustee  
§ 227:6            The removal of a trustee  
§ 227:7            The grounds for the removal of a trustee  
§ 227:8            Checklist: Grounds for removal of a trustee  
§ 227:9            Checklist: Insufficient grounds for removal of a  
                     trustee  
§ 227:10          The procedure for removal of a trustee  
§ 227:11          Form: Petition to remove trustee  
§ 227:11.50      Delivery of property by former trustee  
§ 227:12          The powers and duties of the court appointed  
                     trustee

### **CHAPTER 228. TERMINATING AND DISTRIBUTING THE TRUST**

§ 228:1            Terminating and distributing the trust, generally  
§ 228:2            Terminating the trust according to its terms  
§ 228:3            Revocation of the trust by the grantor  
§ 228:4            Modifying a trust where power of revocation was  
                     omitted by mistake  
§ 228:5            The power to modify as a power to revoke  
§ 228:6            Terminating the trust by agreement of the  
                     beneficiaries  
§ 228:6.50        Nonjudicial settlement agreements-Statutory provisions  
§ 228:7            Terminating the trust by merger of legal and  
                     equitable title  
§ 228:8            Terminating the trust where sole beneficiary has  
                     whole beneficial interest  
§ 228:9            The judicial proceeding to terminate a trust  
§ 228:10          The standing required to seek termination of  
                     trust  
§ 228:11          Terminating the trust because of impossibility of  
                     performance  
§ 228:12          Terminating the trust because of change of  
                     conditions or small size

|             |  |
|-------------|--|
| § 228:13    | Terminating the trust because of illegality  |
| § 228:14    | Terminating the trust because of mistake or misunderstanding                               |
| § 228:15    | Terminating the trust because of fraud, duress, undue influence or lack of legal capacity  |
| § 228:16    | Termination of trust provisions by divorce of settlor                                      |
| § 228:17    | Distributing the trust income  |
| § 228:18    | The discretion of the trustee in making distributions                                      |
| § 228:18.50 | Distribution of trust principal in further trust-Trust decanting                           |
| § 228:19    | Resolving conflicting claims among beneficiaries   |
| § 228:20    | Distributions to others for the benefit of a beneficiary                                   |
| § 228:21    | Right of beneficiary's creditor to reach trust property                                    |
| § 228:22    | The power of the trustee to rely on affidavits and other documents in making distributions |
| § 228:23    | The duty to distribute the trust estate  |
| § 228:24    | The power of the trustee after the termination of the trust                                |
| § 228:25    | Distributions in kind  |
| § 228:26    | When the trust instrument directs that trust assets be converted                           |
| § 228:27    | Distributions to several beneficiaries   |
| § 228:28    | The final account of the trustee   |

## **CHAPTER 228A. TRUST DECANTING LAW UNDER ILLINOIS TRUST CODE**

|           |  |
|-----------|--|
| § 228A:1  | Trust Decanting Law and definitions                    |
| § 228A:2  | Scope of Trust Decanting Law                           |
| § 228A:3  | Fiduciary duty   |
| § 228A:4  | Application; governing law                             |
| § 228A:5  | Reasonable reliance                                    |
| § 228A:6  | Notice   |
| § 228A:7  | Court involvement                                      |
| § 228A:8  | Formalities  |
| § 228A:9  | Decanting power under expanded distributive discretion |
| § 228A:10 | Decanting power under limited distributive discretion  |
| § 228A:11 | Trust for beneficiary with disability                  |
| § 228A:12 | Protection of charitable interests                     |
| § 228A:13 | Trust limitation on decanting                          |
| § 228A:14 | Change in compensation                                 |
| § 228A:15 | Relief from liability and indemnification              |

## TABLE OF CONTENTS

|           |  |
|-----------|--|
| § 228A:16 | Removal or replacement of authorized fiduciary |
| § 228A:17 | Tax-related limitations                        |
| § 228A:18 | Duration of second trust                       |
| § 228A:19 | Need to distribute not required                |
| § 228A:20 | Savings provision                              |
| § 228A:21 | Trust for care of animal                       |
| § 228A:22 | Settlor  |
| § 228A:23 | Later-discovered property                      |
| § 228A:24 | Obligations                                    |

## **CHAPTER 229. THE ILLINOIS LAWYER AS A FEDERAL AND STATE TAX PLANNER**

|         |   |
|---------|---|
| § 229:1 | The functions of the attorney in tax planning for clients |
| § 229:2 | Minimizing income taxes, in general                       |
| § 229:3 | Checklist: Suggestions for saving income taxes            |
| § 229:4 | List: Tax-sheltered investments                           |
| § 229:5 | Income tax deductions                                     |

## **CHAPTER 230. INCOME TAX PITFALLS**

### **A. ALTERNATIVE MINIMUM TAX**

|          |  |
|----------|--|
| § 230:1  | Alternative minimum tax—In general           |
| § 230:2  | Computing the alternative minimum tax (AMT)  |
| § 230:3  | AMT exemption amount                         |
| § 230:4  | Depreciation preference                      |
| § 230:5  | Alternative tax net operating loss deduction |
| § 230:6  | Standard deduction for personal exemptions   |
| § 230:7  | Itemized deductions under AMT                |
| § 230:8  | Under-age-14—Child's income under AMT        |
| § 230:9  | Incentive stock options under AMT            |
| § 230:10 | Farm losses under AMT                        |
| § 230:11 | Passive losses under AMT                     |
| § 230:12 | Minimum tax credit—Form 8801; Form 8827      |

### **B. AT-RISK RULES**

|          |                                     |
|----------|-------------------------------------|
| § 230:13 | At-Risk rules—In general            |
| § 230:14 | Activities covered by at-risk rules |
| § 230:15 | Amounts considered at risk          |
| § 230:16 | Passive activity losses and credits |
| § 230:17 | Passive losses                      |
| § 230:18 | Passive credits                     |
| § 230:19 | Passive activities                  |

- § 230:20 Trade or business activities under passive activities rules
- § 230:21 Material participation under passive activities rules

### **C. HOBBY LOSSES**

- § 230:22 Nondeductible hobby losses
- § 230:23 Activity defined for purposes of hobby losses rules
- § 230:24 Activities conducted for profit

### **D. CIVIL PENALTIES**

- § 230:25 Civil penalties—In general
- § 230:26 Assessment of penalties
- § 230:27 Reasonable cause
- § 230:28 IRS views on reasonable causes
- § 230:29 Liability for civil penalties
- § 230:30 Failure to file tax returns when due
- § 230:31 Failure to pay tax shown on return
- § 230:32 Failure to pay tax on return
- § 230:33 Failure to deposit taxes
- § 230:34 Accuracy-related penalties
- § 230:35 Negligence or disregard of rules or regs
- § 230:36 Misstating value or basis of property
- § 230:37 Willful failure to obey tax law
- § 230:38 Other civil penalties

### **E. CRIMINAL PENALTIES**

- § 230:39 Criminal penalties for tax law violations

## **CHAPTER 231. TAXATION OF CAPITAL GAINS AND LOSSES**

- § 231:1 The taxation of capital gains and losses
- § 231:2 Computing capital gains and losses
- § 231:3 Tax on net capital gains—Noncorporate taxpayers
- § 231:4 Net capital gain and net capital loss defined
- § 231:5 Capital assets
- § 231:6 Intellectual property
- § 231:7 Real estate sold or exchanged
- § 231:8 Sale of sole proprietorship
- § 231:9 Goodwill and covenants not to compete
- § 231:10 Allocating sales price for sale of a business
- § 231:11 Tax treatment of sale of life estate
- § 231:12 Holding period of capital assets

## TABLE OF CONTENTS

|          |   |
|----------|---|
| § 231:13 | Section 1231 assets                                   |
| § 231:14 | Capital gain, ordinary loss rule                      |
| § 231:15 | Computation of gain or loss on Sec. 1231 transactions |
| § 231:16 | Holding period for Sec. 1231 assets                   |
| § 231:17 | Sec. 1231 property                                    |
| § 231:18 | Rental property used in a trade or business           |
| § 231:19 | Casualty and theft losses—Sec. 1231 transactions      |

## CHAPTER 232. BASIS

|          |  |
|----------|--|
| § 232:1  | Basis of property  |
| § 232:2  | Mortgages and other property as part of basis                              |
| § 232:3  | Adjusted basis   |
| § 232:4  | Increasing basis with capital expenditures                                 |
| § 232:5  | Basis adjustments—Selling expenses   |
| § 232:6  | Basis of personal-use property converted to business use                   |
| § 232:7  | Basis reduction for return of capital                                      |
| § 232:8  | Basis of property acquired by gift or transfer to trust                    |
| § 232:9  | Basis of property acquired from decedent                                   |
| § 232:10 | Estate tax value as basis  |
| § 232:11 | Basis adjustment for qualified joint interest property                     |
| § 232:12 | Basis of property received from living trust with power to revoke or amend |

## CHAPTER 233. LIFE INSURANCE AND ANNUITIES

### A. ANNUITIES

|          |   |
|----------|---|
| § 233:1  | Taxation of annuities                                       |
| § 233:2  | After-death distribution requirements for annuity contracts |
| § 233:3  | Computing the excludible portion of an annuity payment      |
| § 233:4  | The investment in the contract                              |
| § 233:5  | Investment in the contract reduced for refund feature       |
| § 233:6  | Expected return from the contract                           |
| § 233:7  | Taxation of recipients for guaranteed payments              |
| § 233:8  | Single life annuity   |
| § 233:9  | Joint and survivor annuity                                  |
| § 233:10 | Variable annuity  |
| § 233:11 | Life insurance and annuity contract combined                |

- § 233:12 Treatment of dividends received under annuity contract
- § 233:13 Treatment of a loan against annuity contract
- § 233:14 Penalty for premature contract distributions
- § 233:15 Private annuities from other than insurance companies

## **B. LIFE INSURANCE**

- § 233:16 Definition of life insurance contract
- § 233:17 Life insurance proceeds paid because of death of insured
- § 233:18 Credit life insurance
- § 233:19 Proceeds paid for life or in installments
- § 233:20 Family income rider
- § 233:21 Dividends on life insurance
- § 233:22 Interest on death benefit proceeds left with insurer
- § 233:23 Disposition of life insurance, endowment and annuity contracts
- § 233:24 Accelerated death benefits and viatical settlements

## **CHAPTER 234. EXCLUSION OF GAIN ON DISPOSITION OF PRINCIPAL RESIDENCES**

- § 234:1 Exclusion of gain on sale or exchange of principal residence
- § 234:2 Reporting gain from sale of principal residence
- § 234:3 Only one sale or exchange of residence in two years
- § 234:4 Limit on home sale exclusion
- § 234:5 Limit for joint filers who don't qualify for the maximum exclusion
- § 234:6 Reduced exclusion for those failing ownership, use requirements, or two-year rule
- § 234:7 Amount of reduced home sale exclusion

## **CHAPTER 235. INTRA-FAMILY TRANSACTIONS**

- § 235:1 Transfers between husband and wife
- § 235:2 Transfers to a third party on behalf of a spouse or former spouse
- § 235:3 Income from discharge or cancellation of debt (COD)
- § 235:4 When a debt is discharged or cancelled
- § 235:5 Bad debt deduction
- § 235:6 Debts between related persons
- § 235:7 Family employment
- § 235:8 Interest paid to a related person



TABLE OF CONTENTS

**CHAPTER 236. INDIVIDUAL RETIREMENT  
ACCOUNTS AND SIMPLE PLANS**

**A. INDIVIDUAL RETIREMENT SAVINGS  
ACCOUNTS (IRAS)**

- § 236:1 Retirement savings plans for individuals
- § 236:2 Spousal IRAs
- § 236:3 Active participant defined
- § 236:4 Reduced deduction limits for active participants
- § 236:5 Deductible contribution for nonparticipant spouse of  
active participant
- § 236:6 Penalty for excess IRA contribution
- § 236:7 Nondeductible contributions
- § 236:8 Amounts contributed to IRA
- § 236:9 Contributions deadline
- § 236:10 Exemption of IRA from tax
- § 236:11 Transferability of IRA interests
- § 236:12 Permitted IRA distributions
- § 236:13 Distribution rollover from IRA to another eligible  
retirement plan
- § 236:14 Required IRA distributions
- § 236:15 When tax losses of IRA are recognized
- § 236:16 Surviving spouse's election to treat decedent's IRA  
as own
- § 236:17 Required minimum IRA distribution not eligible for  
rollover

**B. ROTH IRAS**

- § 236:18 *[Reserved]*
- § 236:19 *[Reserved]*
- § 236:20 *[Reserved]*
- § 236:21 *[Reserved]*
- § 236:22 *[Reserved]*
- § 236:23 *[Reserved]*
- § 236:24 *[Reserved]*
- § 236:25 *[Reserved]*
- § 236:26 *[Reserved]*
- § 236:27 *[Reserved]*
- § 236:28 *[Reserved]*

§ 236:29 *[Reserved]*

§ 236:30 *[Reserved]*

§ 236:31 *[Reserved]*

§ 236:32 *[Reserved]*

§ 236:33 *[Reserved]*

§ 236:34 *[Reserved]*

§ 236:35 *[Reserved]*

§ 236:36 *[Reserved]*

§ 236:37 *[Reserved]*

§ 236:38 *[Reserved]*

§ 236:39 *[Reserved]*

§ 236:40 *[Reserved]*

### **C. SIMPLIFIED EMPLOYEE PENSION (SEP)**

§ 236:41 Simplified employee pensions—In general

§ 236:42 How to establish a SEP

§ 236:43 Employer's deduction for contributions to SEP

§ 236:44 Amount employer can contribute to SEP

§ 236:45 Treatment of employer contributions to a SEP on behalf of an employee

### **D. SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES (SIMPLE)**

§ 236:46 Savings Incentive Match Plan for Employees (SIMPLE)—In general

§ 236:47 Qualified salary reduction arrangements under simple retirement plans

§ 236:48 Compensation defined

§ 236:49 Employees' election to terminate or modify participation

§ 236:50 Participation and vesting requirements

§ 236:51 Employer's deduction for contribution to simple retirement accounts

§ 236:52 Tax treatment of employees for contributions on their behalf

§ 236:53 Tax treatment of distributions to employees and beneficiaries

§ 236:54 Tax-free rollovers from SIMPLE retirement accounts

§ 236:55 Penalty for early withdrawal

§ 236:56 Employees' required notices of rights under simple retirement plans

## TABLE OF CONTENTS

### **E. SIMPLE 401(K) PLANS**

- § 236:57 Simple 401(k) plans—In general
- § 236:58 Contribution requirements for simple 401(k) plans
- § 236:59 Employer's nonelective contribution alternative to matching contributions
- § 236:60 Period for simple 401(k) participants to make salary reduction elections
- § 236:61 Notice of simple 401(k) elective contribution rules to eligible employees

### **CHAPTER 237. PENSION AND PROFIT SHARING PLANS**

- § 237:1 Employee qualified retirement benefit plans
- § 237:2 Pension plans
- § 237:3 Profit-sharing plans
- § 237:4 Stock bonus plans
- § 237:5 Employee stock ownership plans (ESOPs)
- § 237:6 Annuity plans
- § 237:7 Custodial account
- § 237:8 Plans covering self-employed individuals—Keogh plans
- § 237:9 Sec. 401(k) plans
- § 237:10 Amount of elective 401(k) (CODA) deferrals
- § 237:11 Hardship withdrawals
- § 237:12 Special nondiscrimination tests for 401(k) plans
- § 237:13 Simple 401(k) plans
- § 237:14 Contribution requirements for simple 401(k) plans
- § 237:15 Employer's nonelective contribution alternative to matching contributions
- § 237:16 Period for simple 401(k) participants to make salary reduction elections
- § 237:17 Notice of simple 401(k) elective contribution rules to eligible employees
- § 237:18 Catch-up contributions for individuals aged 50 or over
- § 237:19 Nondiscrimination rules and catch-up contributions
- § 237:20 Qualification requirements for employee plans
- § 237:21 Requirement that plan must benefit employees or their beneficiaries exclusively
- § 237:22 Self-employed person as "employee"
- § 237:23 Employer deductions under qualified employee plans
- § 237:24 Ceiling on deductions for contributions to pension and annuity plans
- § 237:25 Deduction limit for contributions to profit-sharing and stock bonus plans

- § 237:26 Excise tax of 10% on excess nondeductible contributions
- § 237:27 Taxing employees on qualified plans distributions
- § 237:28 Lump-sum distributions
- § 237:29 Penalty for premature distributions

## **CHAPTER 238. THE TAXATION OF PARTNERSHIPS**

- § 238:1 Partnerships and joint ventures
- § 238:2 Creation of partnerships
- § 238:3 Partners' contributions
- § 238:4 Capital gain treatment of disposition of partnership interest
- § 238:5 Realization of income upon receipt of a capital interest for services
- § 238:6 Receipt of profit interest in return for services
- § 238:7 Basis and holding period for partner's interest and partnership property
- § 238:8 Taxation of partnership income
- § 238:9 Elections made by the partnership
- § 238:10 Partnership losses
- § 238:11 Expenses paid by a partner
- § 238:12 Distributions by a partnership
- § 238:13 Tax treatment on retirement of partner
- § 238:14 Termination of partnership

## **CHAPTER 239. THE TAXATION OF CORPORATIONS**

- § 239:1 How corporations are taxed
- § 239:2 Mandatory corporation treatment for certain entities
- § 239:3 Election to be treated as trust or business entity
- § 239:4 Taxation of corporation distributions
- § 239:5 Distributions of stock or rights—Effect on earnings and profits
- § 239:6 Accumulated earnings tax
- § 239:7 Amount of accumulated earnings credit allowed
- § 239:8 Reasonable needs of the business

## **CHAPTER 240. TAX-FREE INCORPORATION**

- § 240:1 Incorporations and transfers to controlled corporations—Code Sec. 351 transfers
- § 240:2 Tax-free incorporations and transfers to controlled corporations

## TABLE OF CONTENTS

- § 240:3 Property that may be transferred in a tax-free incorporation
- § 240:4 Exchange for “stock”
- § 240:5 “Control” requirement for tax-free transfers
- § 240:6 Exchanges motivated by tax avoidance
- § 240:7 Incorporating a partnership

## **CHAPTER 241. THE SUBCHAPTER S CORPORATION**

### **A. S CORPORATIONS**

- § 241:1 S Corporations—In general
- § 241:2 Eligibility to elect status
- § 241:3 Number of shareholders
- § 241:4 Consents of the shareholders
- § 241:5 One class of stock
- § 241:6 “Persons” who can be shareholders
- § 241:7 Trusts as S Corporations shareholders

### **B. MAKING THE ELECTION TO BE AN S CORPORATION**

- § 241:8 Electing to be taxed as S Corporation
- § 241:9 When to make S Corporation election
- § 241:10 Relief from inadvertent invalid election
- § 241:11 Years for which S Corporation election is effective

### **C. THE TAX TREATMENT OF AN S CORPORATION**

- § 241:12 Taxation of S Corporations
- § 241:13 Tax treatment of distributions to an S Corporation’s shareholders

### **D. VOLUNTARY AND INVOLUNTARY TERMINATION OF STATUS**

- § 241:14 Voluntary termination of election to be a S Corporation
- § 241:15 Involuntary terminations of S Corporation status
- § 241:16 Waiver of inadvertent terminations

## **CHAPTER 242. SECTION 302 AND 303 STOCK REDEMPTIONS**

- § 242:1 Tax treatment of stock redemptions
- § 242:2 Tax on shareholders—Stock redemptions

- § 242:3 Stock redemption defined
- § 242:4 Stock redemptions which result in capital gains to the shareholders
- § 242:5 Substantially disproportionate redemptions
- § 242:6 Complete termination of a shareholder's interest
- § 242:7 Redemptions not essentially equivalent to a dividend
- § 242:8 Meaningful reduction in shareholder's proportionate interest
- § 242:9 Redemptions in partial liquidation of noncorporate shareholder
- § 242:10 Redemption of stock included in decedent's estate

## **CHAPTER 243. CORPORATE REORGANIZATIONS**

- § 243:1 Corporate reorganizations
- § 243:2 Types of reorganizations
- § 243:3 Plan of reorganization
- § 243:4 A party to a reorganization
- § 243:5 Control under the reorganization rules
- § 243:6 Continuity of interest requirement
- § 243:7 Continuity of business enterprise requirement
- § 243:8 Type A reorganization: Merger or consolidation
- § 243:9 Type B reorganization: Stock for stock
- § 243:10 Type C reorganization: Assets for stock
- § 243:11 Type D reorganization: Transfer of assets to subsidiary
- § 243:12 Spin-offs, split-offs, and split-ups
- § 243:13 Taxing the distributing corporation
- § 243:14 Type E reorganization: Recapitalization
- § 243:15 Type F reorganization: Change in identity
- § 243:16 Type G reorganization: Bankruptcy and similar proceedings
- § 243:17 Taxation of shareholders and corporate parties to a reorganization
- § 243:18 Effect on corporate parties to reorganization

## **CHAPTER 244. CORPORATE LIQUIDATIONS**

- § 244:1 Corporate liquidations
- § 244:2 Taxing shareholders on liquidation
- § 244:3 Distributing assets with unascertainable value
- § 244:4 Taxing corporations on distributions of property—Complete liquidation

## TABLE OF CONTENTS

§ 244:5 Complete liquidation

## **CHAPTER 245. THE FEDERAL ESTATE TAX**

- § 245:1 The federal estate tax, generally
- § 245:2 Valuation of gross estate
- § 245:3 Special use valuation
- § 245:4 Deduction for qualified family-owned business interests
- § 245:5 Alternate valuation election—Six months after death
- § 245:6 Life insurance
- § 245:7 Annuities and pensions
- § 245:8 Jointly held property
- § 245:9 Qualified terminable interest property
- § 245:10 Power subject to power of appointment
- § 245:11 Qualified disclaimers
- § 245:12 Transfers during decedent's lifetime
- § 245:13 Retaining income or use for life
- § 245:14 Transfers taking effect at death
- § 245:15 Power to revoke or change disposition
- § 245:16 Deductible expenses, claims, debts, and losses
- § 245:17 Deduction of state death taxes—After 2004
- § 245:18 Claims against the estate
- § 245:19 Marital deduction for property passing to spouse
- § 245:20 Deduction for charitable bequests
- § 245:21 Unified credit against estate tax
- § 245:22 Credit for tax on prior transfers
- § 245:23 Other credits against tax
- § 245:24 Estate tax computation and rates
- § 245:25 Estate tax returns
- § 245:26 Extension of time to pay federal estate tax
- § 245:27 *[Reserved]*

## **CHAPTER 246. GENERATION-SKIPPING TRANSFER (GST) TAX**

- § 246:1 The Generation-Skipping Transfer (GST) tax
- § 246:2 Disclaimed property as generation-skipping transfer
- § 246:3 “Transferor” defined for GST purposes
- § 246:4 Effective date for Generation-Skipping Transfer (GST) tax
- § 246:5 Irrevocable trust
- § 246:6 Rule Against Perpetuities

- § 246:7 Exemptions from Generation-Skipping Transfer (GST) tax
- § 246:8 Computation and payment of Generation-Skipping Transfer (GST) tax
- § 246:9 Determining value of property subject to Generation-Skipping Transfer (GST) tax
- § 246:10 *[Reserved]*
- § 246:11 Liability for GST taxes
- § 246:12 Duty to file GST return and pay tax

## **CHAPTER 247. THE FEDERAL GIFT TAX**

- § 247:1 Gift tax
- § 247:2 Gifts subject to tax
- § 247:3 Gifts in trust
- § 247:4 Qualified disclaimers
- § 247:5 Below-market-rate-loans as gifts
- § 247:6 How to compute the gift tax
- § 247:7 Unified credit
- § 247:8 Annual exclusion
- § 247:9 Gift tax marital deduction and charitable deductions
- § 247:10 Gift tax returns

## **CHAPTER 248. THE ILLINOIS ESTATE TAX AND GENERATION-SKIPPING TRANSFER TAX**

- § 248:1 The Illinois estate tax
- § 248:2 Definitions
- § 248:3 Illinois estate tax
- § 248:4 Illinois generation-skipping transfer tax
- § 248:5 Determination of tax situs and valuation
- § 248:6 Returns and payments
- § 248:7 Supplemental returns; refunds
- § 248:8 Penalties for failure to file tax return or to pay tax
- § 248:9 Interest
- § 248:10 Liens and personal liability
- § 248:11 Reimbursement
- § 248:12 Parent as natural guardian for purposes of Section 2032A of the Internal Revenue Code
- § 248:13 Statute of limitations; claims for refund
- § 248:14 Circuit court jurisdiction and venue
- § 248:15 Duty of Attorney General; failure to pay tax; proceedings
- § 248:16 Agreements with other states for payment of tax imposed by this Act



TABLE OF CONTENTS

**CHAPTER 249. ILLINOIS INCOME TAXES**

**I. ILLINOIS INCOME TAXES, GENERALLY**

- § 249:1 Illinois income taxes, generally
- § 249:2 The personal property tax replacement tax
- § 249:3 Effect of determination for federal tax purposes
- § 249:4 Exempt organizations

**II. NONRESIDENTS' LIABILITY FOR ILLINOIS INCOME TAX**

- § 249:5 The liability of nonresidents for Illinois income tax, generally
- § 249:6 Allocation and apportionment of base income—General rule
- § 249:7 Compensation paid to nonresidents
- § 249:8 Nonbusiness income of persons other than residents
- § 249:9 Business income of persons other than residents
- § 249:10 Income tax returns for nonresidents

**III. THE ILLINOIS PERSONAL INCOME TAX**

- § 249:11 The Illinois personal income tax, generally
- § 249:12 Base income and modifications thereto
- § 249:13 Standard exemptions
- § 249:14 Joint returns by husband and wife
- § 249:15 Withholding of state income tax
- § 249:16 Declarations and payment of estimated tax

**CHAPTER 250. OTHER TAXES IN ILLINOIS**

- § 250:1 State taxes, generally
- § 250:2 Checklist: Some of the taxes, licenses, etc., payable to Illinois, its counties and municipalities
- § 250:3 The personal property tax replacement tax
- § 250:4 The real estate tax

**Volume 20**

**CHAPTER 251. THE STRUCTURE OF THE FULL-SERVICE ELDER LAW PRACTICE**

- § 251:1 Building the full-service proactive law firm
- § 251:2 The basic structural forms of elder law firms
- § 251:3 The benefits provided by the suggested Business Model for a full-service, proactive elder law firm

- § 251:4 The decision to become a full-service proactive elder law firm
- § 251:5 The general structure of the full-service proactive elder law firm
- § 251:6 The management and operation of the full-service proactive elder law firm
- § 251:7 Billing for the services of the elder law firm

## **CHAPTER 252. THE PERSONNEL OF THE FULL-SERVICE PROACTIVE ELDER LAW FIRM**

- § 252:1 The lawyer(s) in the full-service proactive elder law firm
- § 252:2 Selecting the nonlawyers who will supply services to elderly clients
- § 252:3 Training the paralegals in the full-service proactive elder law firm
- § 252:4 The special areas of expertise of the paralegals in the elder law firm
- § 252:5 Supervising the activities of the paralegals
- § 252:6 Building and maintaining a great esprit de corps within the firm

## **CHAPTER 253. THE ELDER LAW FIRM'S OFFICES AND EQUIPMENT**

- § 253:1 The location, design, equipment, and other attributes of the elder law firm's offices
- § 253:2 The ambiance of your elder law offices
- § 253:3 Intra-office communications equipment and procedures for the elder law practice
- § 253:4 Communications by office staff with those outside the firm

## **CHAPTER 254. THE ELDER LAW FIRM'S ELDER CARE DATABASE**

- § 254:1 The elder law firm's basic asset—Knowledge and information
- § 254:2 The subjects to include in the collected information
- § 254:3 Procedures for producing and maintaining an Elder Service Database

## **CHAPTER 255. ESTABLISHING THE FIRM'S RELATIONSHIP WITH THE CLIENT**

- § 255:1 Establishing the elder law firm's relationship with its clients

## TABLE OF CONTENTS

- § 255:2 Preliminary dealings with potential clients
- § 255:3 Determining which person is the client
- § 255:4 Dealing with the client who is becoming or has become mentally incompetent
- § 255:5 Building a complete file of information about clients

## **CHAPTER 256. MAINTAINING GOOD RAPPORT AMONG THE FIRM'S STAFF AND CLIENT**

- § 256:1 Establishing the best possible relationship with older clients
- § 256:2 Understanding the many problems that afflict elderly clients
- § 256:3 The attorney's communications and conduct in dealing with elderly clients
- § 256:4 Drafting and executing elderly clients' legal documents
- § 256:5 The importance of providing all requested legal services promptly

## **CHAPTER 257. THE ETHICAL STANDARDS OF THE ELDER LAW FIRM**

- § 257:1 Maintaining the highest ethical standards in the elder law practice
- § 257:2 The absolute rule of complete confidentiality—The attorney-client privilege
- § 257:3 Dealing with conflicts of interest
- § 257:4 Safekeeping a client's property

## **CHAPTER 258. CREATING EXCELLENT PUBLIC RELATIONS FOR THE ELDER LAW FIRM**

- § 258:1 Being a good business citizen in your community
- § 258:2 The relations of your firm with other lawyers
- § 258:3 The pro bono work performed by the firm
- § 258:4 A business model for a pro bono program for an elder law firm
- § 258:5 The bar association, community service organizations, social, political, religious, and recreational activities of the lawyers and staff

## **CHAPTER 259. MARKETING THE ELDER LAW PRACTICE**

- § 259:1 The potential market for your elder law services

- § 259:2 Marketing your elder law practice
- § 259:3 Communicating your field(s) of practice
- § 259:4 Solicitation of professional employment
- § 259:5 The traditional ways to market your elder law practice
- § 259:6 The ways to use the computer and the Internet to market your elder law practice

## **CHAPTER 260. ESTATE PLANNING FOR CLIENTS OVER 55**

- § 260:1 The attorney's expanding role in aiding older clients
- § 260:2 Fifty-five as the watershed year
- § 260:3 The elder law attorney as a counselor
- § 260:4 Understanding the special problems of those over 55
- § 260:5 Helping clients minimize the problems of old age
- § 260:6 Helping older clients meet their changing needs during old age

## **CHAPTER 261. SPECIAL PROBLEMS IN ESTATE PLANNING FOR CLIENTS OVER 55**

- § 261:1 Creating the best estate plans for clients over 55
- § 261:2 Estate planning for the older person without children
- § 261:3 Estate planning for the older person with adult children
- § 261:4 Estate planning for the older person with young children
- § 261:5 Counseling the woman who has recently lost her husband
- § 261:6 Counseling the man who has recently lost his wife
- § 261:7 The mental competence of the elderly
- § 261:8 Using powers of attorney to manage estates of the elderly
- § 261:9 Determining the vulnerability of the elderly client to federal estate and gift taxes
- § 261:10 The impact of the changes in the federal death tax laws on the Illinois estate and generation-skipping transfer tax

## **CHAPTER 262. UPDATING ELDER CLIENTS' ESTATE PLANS**

- § 262:1 The careful review of the elder client's estate plan
- § 262:2 The place of a power of attorney for health care in the older client's estate plan

## TABLE OF CONTENTS

- § 262:3 The place of a power of attorney for property in older clients' estate plans
- § 262:4 Wills for the elderly
- § 262:5 Trusts for the elderly
- § 262:6 Guardianships for the elderly
- § 262:7 Advance directives for the elderly

## **CHAPTER 263. USING COMPREHENSIVE LIVING TRUSTS FOR ELDERLY CLIENTS**

- § 263:1 Getting maximum benefits for a client by using the Comprehensive Living Trust
- § 263:2 The benefits to the attorney from using a Comprehensive Living Trust
- § 263:3 The procedures for using a Comprehensive Living Trust to achieve maximum benefits
- § 263:4 Determining which clients can be best served by using a Comprehensive Living Trust
- § 263:5 Preparing the Comprehensive Living Trust and accompanying documents
- § 263:6 Funding the Comprehensive Living Trust
- § 263:7 Ongoing supervision of a Comprehensive Living Trust to assure maximum benefits
- § 263:8 Procedures following the client's death
- § 263:9 Making final distribution and terminating the Comprehensive Living Trust
- § 263:10 Beginning a new era for the deceased client's family

## **CHAPTER 264. OTHER TRUSTS THAT BENEFIT THE ELDERLY**

- § 264:1 Trusts for the elderly client or that benefit the elderly client
- § 264:2 Special forms and uses of trusts for elderly clients
- § 264:3 Uses by others to provide trust benefits for an elderly client
- § 264:4 Using a special needs trust to benefit the elderly

## **CHAPTER 265. SPECIAL PROBLEMS IN PLANNING FOR THE FAILING ELDERLY PERSON**

- § 265:1 Estate planning for the elderly client's last years
- § 265:2 Respecting the right of the elderly to make their own decisions
- § 265:3 The possible stages of deterioration of an elderly person's physical or mental condition

- § 265:4 Determining when an elderly person is in need of substantial special services (the triggering event)
- § 265:5 Obtaining the cooperation of the difficult elderly person
- § 265:6 Adjusting elderly persons' estate plans to changes in their situations
- § 265:7 Checklist: Steps to consider in behalf of the dying client
- § 265:8 Plans for a client who approaches death
- § 265:9 Preplanning the funeral
- § 265:10 Counseling relatives and other beneficiaries about the impact of the death on them

## **CHAPTER 266. THE INTENTIONAL TERMINATION OF LIFE**

- § 266:1 The termination of life, generally
- § 266:2 Homicide
- § 266:3 Suicide, coerced and assisted suicide
- § 266:4 Euthanasia (mercy killing)
- § 266:5 Do not resuscitate (DNR) orders
- § 266:6 Judicial orders withdrawing life support
- § 266:7 Authority of health care surrogate to authorize withdrawal of life support

## **CHAPTER 267. ADVANCE DIRECTIVES—ALTERNATIVE SOLUTIONS FOR THE TERMINALLY ILL**

- § 267:1 Checklist: Summary of the Illinois law regarding advance directives
- § 267:2 The individual's right to direct withdrawal of life support
- § 267:3 The nature of an advance directive
- § 267:4 Rights under the Federal Patient Self-Determination Act
- § 267:5 The individual's directions as to the withdrawal of life support
- § 267:6 The life-sustaining measures an individual may want to avoid if terminally ill
- § 267:7 The individual's directions as to which life-sustaining measure should be given or avoided
- § 267:8 Making the optimum use of an advance directive

Appendix A. Forms

## **CHAPTER 268. LIVING WILLS**

- § 268:1 The Living Will Act

## TABLE OF CONTENTS

|          |   |
|----------|---|
| § 268:2  | The purpose of the Living Will Act          |
| § 268:3  | Definitions in the Living Will Act          |
| § 268:4  | General provisions relating to living wills |
| § 268:5  | Preparing the living will                   |
| § 268:6  | Signing and witnessing the living will      |
| § 268:7  | Delivering and activating the living will   |
| § 268:8  | Revoking a living will                      |
| § 268:9  | Recording a terminal condition              |
| § 268:10 | The physician's responsibilities            |
| § 268:11 | Penalties for violations of the Act         |
| § 268:12 | Immunity under the Act                      |

## Appendix A. Forms

## **CHAPTER 269. HEALTH CARE SURROGATES**

|          |  |
|----------|--|
| § 269:1  | The Health Care Surrogate Act  |
| § 269:2  | Purposes of the Health Care Surrogate Act  |
| § 269:3  | Definitions in the Health Care Surrogate Act   |
| § 269:4  | Applicability of the Health Care Surrogate Act   |
| § 269:5  | The private decision making process by person with decisional capacity                                     |
| § 269:6  | Determining whether a patient has decisional capacity  |
| § 269:7  | Determining whether a person has a qualifying condition permitting withdrawal of life-sustaining treatment |
| § 269:8  | Selecting a surrogate decision maker   |
| § 269:9  | Qualifications of the surrogate decision maker   |
| § 269:10 | Persons entitled to preference in selection of surrogate decision maker                                    |
| § 269:11 | Procedures after identification of surrogate decision maker(s)   |
| § 269:12 | The decision making process  |
| § 269:13 | Decisions of multiple surrogate decision makers  |
| § 269:14 | The decision of the health care surrogate  |
| § 269:15 | Duty of health-care providers to implement decision of health care surrogate                               |
| § 269:16 | Preservation of existing rights  |
| § 269:17 | Legal consequences of complying with surrogate's decision to withdraw life-sustaining treatment            |
| § 269:18 | Effect of reliance on surrogate decision maker's decision  |
| § 269:19 | Immunity of surrogate decision maker   |

## **CHAPTER 270. ANATOMICAL GIFTS**

|         |                                  |
|---------|----------------------------------|
| § 270:1 | The Illinois Anatomical Gift Act |
|---------|----------------------------------|

- § 270:2 Definitions in the Illinois Anatomical Gift Act
- § 270:3 Persons who may execute an anatomical gift
- § 270:4 Persons who may become donees and purposes for which anatomical gifts may be made
- § 270:5 Disability of recipient
- § 270:6 Manner of executing an anatomical gift
- § 270:7 Delivery of document of anatomical gift not required; right to examine
- § 270:8 Amending or revoking anatomical gift before donor's death
- § 270:8.50 Preclusive effect of anatomical gift, amendment, or revocation
- § 270:8.70 Refusal to make anatomical gift; effect of refusal
- § 270:9 Rights and duties at death
- § 270:10 Payment for anatomical gift prohibited
- § 270:11 The Illinois Corneal Transplant Act
- § 270:12 Rights and duties of procurement organizations and others
- § 270:13 Law governing validity; choice of law as to the execution of document of anatomical gift; presumption of validity

Appendix A. Forms

## **CHAPTER 271. HOSPICE AND PALLIATIVE CARE**

- § 271:1 The nature of hospice services and how they are provided
- § 271:2 Palliative care
- § 271:3 The licensing of hospice programs
- § 271:4 Full hospice programs, their general requirements and standards
- § 271:5 Volunteer hospice programs, their general requirements and standards
- § 271:6 The investigation and control of hospice programs
- § 271:7 The revocation or suspension of a hospice license

## **CHAPTER 272. POWERS OF ATTORNEY FOR PROPERTY**

- § 272:1 The nature of the power of attorney for property
- § 272:2 Creating the power of attorney for property
- § 272:3 The uses of the power of attorney for property
- § 272:4 Making the optimum use of the power of attorney for property
- § 272:5 Using the power of attorney for elderly persons
- § 272:6 The power of attorney affecting real estate by person in federal government service



## TABLE OF CONTENTS

§ 272:7 The power coupled with an interest

Appendix A. Forms

### **CHAPTER 273. DURABLE POWERS OF ATTORNEY IN ILLINOIS**

§ 273:1 The Illinois Power of Attorney Act

§ 273:2 The applicability of the Durable Power of Attorney Act

§ 273:3 Definitions in the Durable Power of Attorney Act

§ 273:4 The effect of the Durable Power of Attorney law on earlier actions or accrued rights

### **CHAPTER 274. DRAFTING THE DURABLE POWER OF ATTORNEY FOR PROPERTY**

§ 274:1 Drafting a Durable Power of Attorney for Property

§ 274:2 The Statutory Short Form Power of Attorney for Property

§ 274:3 Problems in using the Statutory “Short Form” and how to correct them

§ 274:4 The powers of the agent under the Statutory Short Form of Power of Attorney for Property

§ 274:5 Conferring additional powers on the agent

§ 274:6 Providing for the activation, amending, revocation, and termination of Power of Attorney for Property

§ 274:7 The explanation to the principal of the Statutory Short Form of Power of Attorney for Property

§ 274:8 The execution and acknowledgment of the power of attorney

Appendix A. Forms

### **CHAPTER 275. THE DUTIES OF THE AGENT (POA)**

§ 275:1 The rights and obligations of an agent

§ 275:2 The fiduciary obligations of the agent

§ 275:3 Determining scope of agent’s authority

§ 275:4 Protecting those acting in reliance on the agency

§ 275:5 The apparent authority of agent

§ 275:6 Duties of agent when principal is incapacitated

§ 275:7 Preservation of the principal’s estate plan and trusts

### **CHAPTER 276. CONTROLLING ACTIONS OF THE AGENT**

§ 276:1 Remedies of persons aggrieved by agent’s actions

- § 276:2 Court supervision of agencies
- § 276:3 Amending and revoking the power of attorney for property
- § 276:4 Amending and terminating a power of attorney for property

Appendix A. Forms

## **CHAPTER 277. THE POWER OF ATTORNEY FOR HEALTH CARE**

- § 277:1 The nature and use of Powers of Attorney for Health Care
- § 277:2 The Illinois Power of Attorney for Health Care Act
- § 277:3 The purpose of the Power of Attorney for Health Care Law
- § 277:4 Applicability of the Power of Attorney for Health Care Law
- § 277:5 Definitions in the Powers of Attorney for Health Care Law
- § 277:6 General principles applicable to the Power of Attorney for Health Care Law
- § 277:7 The relationship between powers of attorney for health care and a client's other estate planning
- § 277:8 The statutory short form of Power of Attorney for Health Care
- § 277:9 Special problems in drafting a Power of Attorney for Health Care
- § 277:10 Limitations on health care agencies
- § 277:11 The powers and duties of the health care agent
- § 277:12 The duties of health care providers and others in relation to health care agencies
- § 277:13 Immunities of health care providers, agents, and others in relation to health care agencies
- § 277:14 Penalties imposed under the Power of Attorney for Health Care Law
- § 277:15 The revocation and amendment of health care agencies

Appendix A. Forms

## **CHAPTER 278. HANDLING A DISABLED PERSON'S ESTATE WITHOUT A GUARDIAN**

- § 278:1 Determining whether a disabled person needs a guardian
- § 278:2 Preparing the Small Estate Affidavit for a disabled person

## TABLE OF CONTENTS

- § 278:3 Using a power of attorney for property for a disabled person
- § 278:4 Using a power of attorney for health care for a disabled person
- § 278:5 Collecting Social Security payments by a representative payee
- § 278:6 Protective payments of State aid to a substitute payee
- § 278:7 Compelling a competent adult to submit to medical treatment

## Appendix A. Forms

### **CHAPTER 279. THE GUARDIANSHIP PROCEEDING FOR A DISABLED ADULT**

- § 279:1 The nature of the guardianship proceeding
- § 279:2 The definition of a person with a disability
- § 279:3 The meaning of developmental disability
- § 279:4 The proceedings to appoint a guardian for a disabled person
- § 279:5 The petition to appoint a guardian
- § 279:6 Venue in guardianship proceedings
- § 279:7 Notice and summons in guardianship proceedings
- § 279:8 Making optimum use of the legal guardianship for a disabled adult
- § 279:9 Effect of adjudication of disability upon ward's durable powers of attorney

## Appendix A. Forms

### **CHAPTER 280. SELECTING AND APPOINTING A GUARDIAN FOR A DISABLED ADULT**

- § 280:1 Who may act as guardian for the disabled person
- § 280:2 Designation of guardian
- § 280:3 Testamentary guardian for the disabled person
- § 280:4 Appointing a successor guardian
- § 280:5 Factors considered in appointment of guardian for the disabled person
- § 280:6 Powers and duties of the state guardian
- § 280:7 The State Guardian

## **CHAPTER 281. APPOINTING A STANDBY OR SHORT-TERM GUARDIAN OR A TEMPORARY GUARDIAN FOR A DISABLED PERSON**

- § 281:1 The appointment of a standby guardian of a disabled person, generally
- § 281:2 The guardian's designation of a standby guardian of a disabled person
- § 281:3 The proceeding to appoint a standby guardian of a disabled person
- § 281:4 The duties and activities of the standby guardian of a disabled person
- § 281:5 Limiting or terminating the authority of a standby or short term guardian
- § 281:6 Duty of standby guardian to file petition to appoint guardian
- § 281:7 The appointment of a short-term guardian of a disabled person
- § 281:8 The duties and activities of the short-term guardian of a disabled person
- § 281:9 Temporary guardian for the allegedly disabled person
- § 281:10 The petition for temporary guardian—Cook County

Appendix A. Forms

## **CHAPTER 282. THE HEARING FOR APPOINTMENT OF A GUARDIAN**

- § 282:1 Procedures preliminary to the hearing
- § 282:2 The report of respondent's disability
- § 282:3 The hearing
- § 282:4 The order appointing the guardian of the disabled person
- § 282:5 Notice of right to seek modification
- § 282:6 The voidability of the adjudication of disability
- § 282:7 The oath and bond—Bond without writing
- § 282:8 The legal disabilities of a ward

Appendix A. Forms

## **CHAPTER 283. THE PERSONAL GUARDIAN FOR A DISABLED PERSON**

- § 283:1 The court's duties in controlling ward's person and estate
- § 283:2 Duties of the personal guardian of the disabled person

## TABLE OF CONTENTS

- § 283:3 Residential placement of the ward
- § 283:4 Divorce by disabled adult
- § 283:5 Standards for decision making by guardian
- § 283:6 Authority of guardian to act pursuant to other acts
- § 283:7 The guardian as agent under power of attorney for health care or as health care surrogate decision maker
- § 283:8 Sterilization of ward

## **CHAPTER 284. THE ESTATE GUARDIAN FOR A DISABLED ADULT**

- § 284:1 Duties of the estate guardian of the disabled person
- § 284:2 The duty of the guardian to obtain benefits and public assistance for the ward
- § 284:3 Investing the disabled person's assets
- § 284:4 The disabled person's contracts and other dealings
- § 284:5 Citation proceedings by guardian
- § 284:6 Voiding pre-adjudication transactions
- § 284:7 Claims against ward's or deceased ward's guardianship estate
- § 284:8 Tolling of statute of limitations for claims by disabled person
- § 284:9 Right of state to claim Social Security to reimburse for care
- § 284:10 Effect of adjudication of disability upon ward's durable powers of attorney
- § 284:11 Reliance on authority of guardian
- § 284:12 Exoneration of guardian acting in accordance with law
- § 284:13 Dealing with the ward's personal property
- § 284:14 Dealing with the ward's real estate

## **CHAPTER 285. ESTATE PLANNING AND PROPER USE OF FUNDS BY GUARDIAN**

- § 285:1 Court authorized estate planning by the guardian
- § 285:2 Permissible actions or applications of ward's funds
- § 285:3 Guardian's authority to determine manner of selecting from among ward's assets for use for benefit of ward
- § 285:4 Using ward's funds for gifts and to support ward's relatives
- § 285:5 Conditional gifts of the ward's funds

## **CHAPTER 286. REPORTS OF THE GUARDIAN**

- § 286:1 Accounts of estate guardian of disabled person

- § 286:2 Notice of reports and accounts
- § 286:3 Current accounts of the representative
- § 286:4 Reports of personal guardian of disabled person

## **CHAPTER 287. MODIFYING AND TERMINATING THE GUARDIANSHIP**

- § 287:1 The petition to terminate the guardianship or modify the guardian's duties
- § 287:2 The power of the court to appoint a guardian ad litem for a disabled person to investigate charges of neglect of ward
- § 287:3 The hearing on the petition to terminate the guardianship or modify the guardian's duties
- § 287:4 The order entered pursuant to the petition to terminate the guardianship or modify the guardian's duties
- § 287:5 Removal of guardian
- § 287:6 The procedure for removing a guardian
- § 287:7 Compensation of attorney
- § 287:7.50 Use of social security benefits to pay costs and fees
- § 287:8 Compensation of guardian
- § 287:9 The extent of the court's jurisdiction after ward's death
- § 287:10 Powers of guardian upon death of ward
- § 287:11 Rights of ward upon termination of guardianship
- § 287:12 The final account of the estate guardian
- § 287:13 The effect of the order terminating the adjudication of incompetency
- § 287:14 The standing required to appeal an order terminating a guardianship
- § 287:15 Right of attorney general to intervene in guardianship proceeding

Appendix A. Forms

## **CHAPTER 288. COUNSELING OLDER CLIENTS ABOUT THEIR IMPORTANT MAJOR DECISIONS**

- § 288:1 Determining and advising the older client's objectives for the remaining years
- § 288:2 Counseling older clients about possible need to build family harmony
- § 288:3 Counseling older clients about possible future needs for special services
- § 288:4 Counseling older clients about possible need for

## TABLE OF CONTENTS

- entitlements, financial assistance, benefits and other financial assistance
- § 288:5 Counseling older clients about selection of appropriate living facilities
- § 288:6 Counseling older clients about being flexible and cooperative in working with caregivers
- § 288:7 Counseling older clients about taking families into their confidence
- § 288:8 Counseling older clients about living with a significant other
- § 288:9 Counseling older clients about problems of marriage late in life
- § 288:10 Counseling older clients about divorce and legal separation
- § 288:11 Counseling older clients about passing on a family business
- § 288:12 Counseling older clients about asset protection

## **CHAPTER 289. COUNSELING THE OLDER CLIENT ABOUT WHETHER, WHEN, AND WHERE TO RETIRE**

- § 289:1 Helping older clients make retirement decisions
- § 289:2 Making the decision whether to retire
- § 289:3 Making the decision to retire fully
- § 289:4 Making the decision as to the best time to retire
- § 289:5 Making the decision as to where to retire

## **CHAPTER 290. COUNSELING OLDER CLIENTS ABOUT THE NEED FOR, AND THE ACCOMPLISHMENT OF DOWNSIZING**

- § 290:1 Why most elderly clients badly need to downsize and declutter
- § 290:2 What can be done to simplify the elder client's living facilities for the remaining years
- § 290:3 Formulating the older client's plan to downsize
- § 290:4 Executing the elder client's plan to downsize and declutter

## **CHAPTER 291. COUNSELING OLDER CLIENTS ABOUT EMPLOYMENT**

- § 291:1 Employment during the later years
- § 291:2 Deciding what work to do in years after 55
- § 291:3 Helping older clients get training for new work

- § 291:4 Preventing and correcting employment discrimination against elderly clients

## **CHAPTER 292. PROTECTING OLDER CLIENTS FROM DISCRIMINATION**

- § 292:1 An overview of the rights and legal protection of people over 55
- § 292:2 The Illinois Human Rights Act
- § 292:3 Discrimination in real estate transactions
- § 292:4 Discrimination in financial credit transactions
- § 292:5 Discrimination relating to public accommodations
- § 292:6 Discrimination relating to higher education
- § 292:7 Other civil rights protected against discrimination

## **CHAPTER 293. PROTECTING OLDER CLIENTS' RIGHTS AS GRANDPARENTS**

- § 293:1 Counseling grandparents as to their rights to custody and visitation
- § 293:2 The right of grandparents to obtain custody of grandchildren
- § 293:3 The adoption of grandchildren by grandparents
- § 293:4 The appointment of grandparents as guardian for minor grandchildren
- § 293:5 The visitation rights of grandparents
- § 293:6 Factors considered in granting visitation to grandparents

## **CHAPTER 294. COUNSELING OLDER CLIENTS ABOUT FUNDING THEIR REMAINING YEARS**

- § 294:1 Helping clients avoid poverty in their old age
- § 294:2 Impressing on older clients the importance of funding adequately their remaining years
- § 294:3 Classifying estates by the sufficiency of their retirement funding
- § 294:4 Helping older clients make a realistic estimate of the cost of their remaining years
- § 294:5 Assistance of financial planner in determining the adequacy of a client's funding of old age
- § 294:6 Ways to make up for shortfall in funding old age
- § 294:7 Helping older clients execute a plan to improve their retirement funding



TABLE OF CONTENTS

**CHAPTER 295. EMPLOYERS AND  
EMPLOYEES COVERED UNDER THE  
SOCIAL SECURITY ACT**

- § 295:1 Covered employment
- § 295:2 Definition of employer
- § 295:3 Covered employees
- § 295:4 Agreement to extend coverage for services outside  
U.S.
- § 295:5 Family employment

**CHAPTER 296. EARNINGS COVERED BY  
SOCIAL SECURITY**

- § 296:1 Covered earnings
- § 296:2 Payments to home workers
- § 296:3 Tips
- § 296:4 When wages are considered paid and received

**CHAPTER 297. OTHER RECEIPTS  
SUBJECT TO SOCIAL SECURITY TAXES**

- § 297:1 Agricultural labor compensation
- § 297:2 Annual limitations
- § 297:3 Fringe benefits and other compensation
- § 297:4 Retirement and deferred compensation payments
- § 297:5 Death benefits
- § 297:6 Sick pay
- § 297:7 Self-employment income
- § 297:8 Income from trade or business
- § 297:9 Income from farming
- § 297:10 Other types of income

**CHAPTER 298. THE INSURED'S  
RETIREMENT BENEFITS UNDER SOCIAL  
SECURITY**

- § 298:1 Entitlement to retirement benefits
- § 298:2 Amount and payment of benefits
- § 298:3 Duration of benefits

**CHAPTER 299. THE INSURED'S SPOUSE'S  
RETIREMENT AND DISABILITY UNDER  
SOCIAL SECURITY**

- § 299:1 Wife's and husband's benefits

- § 299:2 Child in care requirements
- § 299:3 Benefits for divorced spouse
- § 299:4 Amount and payment of benefits
- § 299:5 Duration of payments

## **CHAPTER 300. THE INSURED'S CHILD'S BENEFITS UNDER SOCIAL SECURITY**

- § 300:1 Entitlement and reentitlement to child's benefits from Social Security
- § 300:2 Amount of benefits
- § 300:3 Relationship of child to insured
- § 300:4 Dependency requirements
- § 300:5 Contribution for support
- § 300:6 Requirement that child must be living with insured

## **CHAPTER 301. DISABILITY BENEFITS UNDER SOCIAL SECURITY**

- § 301:1 Entitlement to disability benefits
- § 301:2 Disabled surviving spouse or surviving divorced spouse's benefits
- § 301:3 Disabled children's benefits
- § 301:4 Amount and payment of benefits
- § 301:5 Duration of benefits
- § 301:6 The sequential evaluation of disability
- § 301:7 Evaluation of pain and other symptoms

## **CHAPTER 302. SURVIVORS' SOCIAL SECURITY BENEFITS**

- § 302:1 Entitlement to benefits for surviving spouse and surviving divorced spouse
- § 302:2 Amount and payment of benefits
- § 302:3 Entitlement of mothers and fathers to benefit

## **CHAPTER 303. FINANCIAL ASSISTANCE AND SERVICES FOR THE ELDERLY**

- § 303:1 An overview of the programs and services that provide financial support for the elderly
- § 303:2 Financial support for elderly veterans of the Armed Forces
- § 303:3 State and federal programs that give financial support to the elderly
- § 303:4 Community programs that give financial support to the elderly

## TABLE OF CONTENTS

- § 303:5 Financial institutions
- § 303:6 Individuals as sources of financial assistance
- § 303:7 Federal tax breaks for the elderly
- § 303:8 State tax breaks for the elderly

## **CHAPTER 304. UNSATISFACTORY FINANCIAL METHODS TO PRODUCE INCOME**

- § 304:1 Unsatisfactory ways to produce income needed to fund the retirement years
- § 304:2 Annuities
- § 304:3 Long term insurance
- § 304:4 Reverse mortgages and the better options
- § 304:5 Credit card borrowing
- § 304:6 Life Insurance Settlement Agreements
- § 304:7 Payday and other high interest loans

## **CHAPTER 305. SUPPLEMENTAL SECURITY INCOME (SSI)**

- § 305:1 The Supplemental Security Income Program
- § 305:2 Relationship between SSI and Medicaid
- § 305:3 Payments to presumptively disabled and presumptively blind claimants
- § 305:4 Emergency advance payments
- § 305:5 State supplementation of federal SSI benefits
- § 305:6 Optional state supplementation of federal benefits
- § 305:7 General eligibility for Supplemental Security Income (SSI)
- § 305:8 Income standards that determine eligibility for Supplemental Security Income (SSI)
- § 305:9 Determining countable income
- § 305:10 Nonincome items
- § 305:11 Earned income
- § 305:12 Unearned income
- § 305:13 In-kind support and maintenance
- § 305:14 Income used to plan and achieve self-support
- § 305:15 Deeming of income
- § 305:16 Resource requirements of Supplemental Security
- § 305:17 Liquid resources
- § 305:18 Nonliquid resources
- § 305:19 Resources necessary for self-support
- § 305:20 Resources used to plan to achieve self-support
- § 305:21 Deeming of resources

- § 305:22 The amount of SSI benefits
- § 305:23 Computing SSI benefits when Medicaid pays for care of resident of Medical Care Facility
- § 305:24 Computing SSI benefits
- § 305:25 Applying for benefits
- § 305:26 Evidence required to support claim
- § 305:27 Payment period of benefits
- § 305:28 Payment of SSI benefits to representative
- § 305:29 Recovery of overpayments
- § 305:30 Underpayments
- § 305:31 Assignment of benefits
- § 305:32 Suspension of benefits
- § 305:33 Termination of benefits
- § 305:34 Administrative stop-payment actions

## **CHAPTER 306. ILLINOIS PUBLIC AID**

- § 306:1 Public assistance in Illinois
- § 306:2 Definitions relating to Public Aid
- § 306:3 Abbreviations used in connection with Illinois Public Aid
- § 306:4 Eligibility requirements
- § 306:5 Relatives' support responsibility
- § 306:6 Rights of residents
- § 306:7 Social services provided by the Department of Human Services

## **CHAPTER 307. GENERAL ASSISTANCE**

- § 307:1 The Illinois General Assistance Provisions
- § 307:2 A description of the general assistance program
- § 307:3 Requirements for eligibility for general assistance
- § 307:4 Temporary assistance for nonresidents
- § 307:5 Registration for and acceptance of employment
- § 307:6 Participation in educational and vocational training programs
- § 307:7 Acceptance of assignment of job search, training, and work program
- § 307:8 Registration for work, performance of work without compensation
- § 307:9 Multiple convictions for violations for the Illinois Public Aid Code
- § 307:10 Eligibility of adults
- § 307:11 Amount of aid
- § 307:12 Assets of homeless persons
- § 307:13 Major disasters or emergencies; general assistance

## TABLE OF CONTENTS

- § 307:14 Medical practitioners
- § 307:15 Funeral and burial

## **CHAPTER 308. AID TO THE AGED, BLIND, AND DISABLED**

- § 308:1 Overview of aid to the aged, blind, and disabled
- § 308:2 Eligibility requirements
- § 308:3 Restrictions on assets
- § 308:4 Responsibility of sponsors of noncitizens entering country after 8/21/96
- § 308:5 Assignment of medical support rights
- § 308:6 Payments for the aged, blind or disabled (AABD)
- § 308:7 Transfers and fraudulent transfers of property
- § 308:8 Examinations as to blindness or disability
- § 308:9 Entitlement to medical and social services
- § 308:10 Protective payments to substitute payee
- § 308:11 Funeral and burial expenses
- § 308:12 Claim against recipient's estate for benefits conferred

## **CHAPTER 309. THE ILLINOIS CARES RX (PRESCRIPTION MEDICINE) PROGRAM *[Deleted]***

## **CHAPTER 310. THE FOOD STAMP PROGRAM**

- § 310:1 The Illinois Food Stamp Program
- § 310:2 Eligibility to receive food stamps
- § 310:3 The application for food stamp benefits
- § 310:4 Approval of application for food stamps
- § 310:5 The client's duty to cooperate
- § 310:6 The client's duty to work
- § 310:7 Determining the amount of food stamp benefits
- § 310:8 Items purchasable with food stamps
- § 310:9 The requirements to stay eligible for food stamps
- § 310:10 The rights of the recipient of food stamps
- § 310:11 The right to appeal decisions of the IDHS

## **CHAPTER 311. AREA AGENCIES ON AGING**

- § 311:1 The organization and programs of Illinois Area Agencies on Aging

- § 311:2 The division of Illinois into 13 Areas
- § 311:3 The provision of services for senior citizens
- § 311:4 The multipurpose senior centers
- § 311:5 The structure and operation of a typical Illinois Area Agency on Aging—The West Central Illinois Area Agency on Aging
- § 311:6 The activities, programs and services provided by or through the typical senior center

## **CHAPTER 312. MEDICARE PART A**

- § 312:1 Medicare Part A
- § 312:2 Premium health insurance
- § 312:3 General limitations on coverage
- § 312:4 Inpatient hospital services
- § 312:5 Duration of inpatient hospital services
- § 312:6 Deductible and coinsurance
- § 312:7 Skilled nursing care
- § 312:8 Skilled nursing care participating provider requirements
- § 312:9 Rights of skilled nursing residents
- § 312:10 Admission, transfer to and discharge from a skilled nursing facility
- § 312:11 Quality of care at skilled nursing facility
- § 312:12 Level of care covered for extended care services by skilled nursing facility
- § 312:13 Covered items and services
- § 312:14 Duration of benefits
- § 312:15 Prior hospitalization requirement
- § 312:16 Home health care
- § 312:17 Hospice care

## **CHAPTER 313. MEDICARE PART B**

- § 313:1 The Medicare Part B program
- § 313:2 Entitlement to benefits
- § 313:3 Enrollment for Medicare Part B benefit and duration of entitlement
- § 313:4 Premiums for Medicare Part B benefits
- § 313:5 Payment of Medicare Part B benefits
- § 313:6 Medical and other health services covered by Part B benefits
- § 313:7 Facility services provided by Medicare Part B benefits

## **CHAPTER 314. MEDICARE + CHOICE PROGRAM**

- § 314:1 Eligibility for Medicare + Choice benefits

## TABLE OF CONTENTS

- § 314:2 Types of plans available
- § 314:3 Making the election
- § 314:4 Terminations of elections of Medicare + Choice
- § 314:5 Benefits under a Medicare + Choice plan
- § 314:6 Premiums for a Medicare + Choice plan

## CHAPTER 315. MEDICARE PART D

- § 315:1 Preliminary comment about Medicare Part D
- § 315:2 What Subpart D is all about
- § 315:3 The purpose and administration of the program
- § 315:4 Definitions
- § 315:5 Eligibility requirements for a subsidy
- § 315:6 Persons not required to file an application for a subsidy
- § 315:7 Social Security Administration's response to an application for a subsidy
- § 315:8 Events that will make an applicant ineligible for a subsidy
- § 315:9 Effect of filing an application to become eligible for a subsidy
- § 315:10 Time when an application is considered filed
- § 315:11 Duration of an application
- § 315:12 Definitions relating to income
- § 315:13 How earned income is counted
- § 315:14 Earned income that is not counted
- § 315:15 Definitions and types of resources
- § 315:16 The resources that are counted
- § 315:17 How countable resources are determined
- § 315:18 Resources that are excluded from counting
- § 315:19 Causes for increase or reduction of a subsidy or termination of subsidy eligibility
- § 315:20 How does the Original Medicare Plan work with a Medicare Prescription Drug Plan?
- § 315:21 Buying a Medigap (Medicare Supplement Insurance) Policy
- § 315:22 How your bills get paid if you have other health insurance
- § 315:23 Other options to consider
- § 315:24 What Are Medicare Advantage Plans (like HMOs and PPOs)?
- § 315:25 Those who can join
- § 315:26 If you join
- § 315:27 Medicare Special Needs Plans
- § 315:28 Medicare Medical Savings Account Plans (MSAs)

- § 315:29 Medicare Advantage Plans with prescription drug coverage
- § 315:30 The coverage of Medicare Prescription Drugs in Part D
- § 315:31 How the Medicare drug plan works
- § 315:32 The nature of the coverage
- § 315:33 Choosing Medicare Prescription Drug Coverage for the first time
- § 315:34 Switching Medicare prescription drug plans
- § 315:35 Where there is full coverage from a state Medicaid program
- § 315:36 How to join a Medicare drug plan
- § 315:37 The rules that determine whether and when certain drugs are covered
- § 315:38 Methods of payment of Medicare drug plan premiums

## **CHAPTER 316. MEDICARE EXCLUSIONS**

- § 316:1 Exclusions from Medicare coverage
- § 316:2 Items and services that are not reasonable and necessary
- § 316:3 Items and services for which there is no legal obligation to pay or provide, or paid for, authorized or provided by federal, state or local government
- § 316:4 Charges imposed by an immediate relative or household member
- § 316:5 Items and services covered by third-party payers
- § 316:6 Other Medicare exclusions

## **CHAPTER 317. CLAIMS FOR, PAYMENT OF, AND REVIEW OF MEDICARE BENEFITS**

- § 317:1 Payment of Part A or Part B Medicare benefits
- § 317:2 Claims for Medicare benefits
- § 317:3 Limitations of beneficiary liability when Medicare coverage is not available
- § 317:4 Recoupment of overpayment of Medicare benefits
- § 317:5 Review and appeal of Medicare determinations

## **CHAPTER 318. THE MEDICAID (MEDICAL ASSISTANCE) PROGRAM**

- § 318:1 The Medicaid (Medical Assistance) Program of medical care and rehabilitative assistance
- § 318:2 Medicaid definitions
- § 318:3 Classes of persons eligible for Medical Assistance (Medicaid)



## TABLE OF CONTENTS

|          |  |
|----------|--|
| § 318:4  | Citizenship requirements   |
| § 318:5  | Residence requirements   |
| § 318:6  | Age requirements   |
| § 318:7  | Age requirements for medical assistance to blind person (Blind MANG (B))     |
| § 318:8  | Disabled person MANG (D)   |
| § 318:9  | Ineligibility for medical assistance of individuals residing in institutions |
| § 318:10 | The client's duty to cooperate   |
| § 318:11 | The cooperation required in establishing support obligations                 |
| § 318:12 | The assignment of rights to medical support and collection of payment        |
| § 318:13 | The requirement of Social Security numbers                                   |
| § 318:14 | Funeral and burial expenses  |
| § 318:15 | Claim against estate of recipient  |
| § 318:16 | Notice of claim for payment or against estate                                |
| § 318:17 | Lien on real property interests of recipients                                |

## CHAPTER 319. ELIGIBILITY FOR MEDICAID BENEFITS

|          |   |
|----------|---|
| § 319:1  | Eligibility for medical assistance  |
| § 319:2  | Recipient eligibility verification  |
| § 319:3  | The standards imposed on the aged, blind recipients of medical assistance, with no grant [MANG (AARD)]  |
| § 319:4  | The standards imposed on recipients in cases other than long term care, pregnant women and certain children   |
| § 319:5  | Cases in intermediate care, skilled nursing care and DMHDD—Mang (AABD) and all other licensed medical facilities  |
| § 319:6  | Department of Mental Health and Developmental Disabilities (DMHDD) Approved Home and Community Based Residential Settings Under 89 Ill. Adm. Code 140.643 |
| § 319:7  | Services relating to the Pregnant Woman Eligible for Medical Assistance Program [MANG (P)]  |
| § 319:8  | Department of Mental Health and Developmental Disabilities (DMHDD) Approved Home and Community Based Residential Settings                                 |
| § 319:9  | Department of Mental Health and Developmental Disabilities (DMHDD) licensed community-integrated living arrangements                                      |
| § 319:10 | The Supplemental Medical Insurance Benefits (SMIB) buy-in program   |

- § 319:11 Eligibility for medicare cost sharing as a Qualified Medicare Beneficiary (QMB)
- § 319:12 Eligibility for medical payment of Medicare Part B premiums as a specified low-income Medicare Beneficiary (SLIB)
- § 319:13 Qualified Medicare Beneficiary (QMB) income standard
- § 319:14 Specified Low-income Medicare Beneficiary (SLIB) income standards
- § 319:15 Unearned income
- § 319:16 Budgeting unearned income
- § 319:17 Exempt unearned income
- § 319:18 Earned income
- § 319:19 Prevention of spousal impoverishment—The community spouse
- § 319:20 Assets considered in determining eligibility
- § 319:21 Property transfers
- § 319:22 Rules governing the spend-down of a recipient's assets (AABD MANG)
- § 319:23 Medicaid qualifying trusts
- § 319:24 Trusts established before August 11, 1993
- § 319:25 Treatment of trusts established after August 11, 1993

## **CHAPTER 320. *[Reserved]***

## **CHAPTER 321. THE NATURE AND AMOUNT OF MEDICAID BENEFITS**

- § 321:1 The nature and amount of Medicaid
- § 321:2 Co-payments by recipients
- § 321:3 Medical services
- § 321:4 SeniorCare pharmaceutical benefits
- § 321:5 Health benefits for workers with disabilities
- § 321:6 Health Insurance Premium Payment (HIPP) Program
- § 321:7 Foster Care Program
- § 321:8 Supplemental payments
- § 321:9 Hospital Insurance Benefits (HIB)
- § 321:10 Recipient Restriction Program (RRP)
- § 321:11 Facilities that provide care for Alzheimer's victims

## **CHAPTER 322. COUNSELING ABOUT LIVING FACILITIES FOR ELDERLY PEOPLE**

- § 322:1 An overview of the types of housing available for the elderly

## TABLE OF CONTENTS

- § 322:2 The most appropriate living facilities for an elderly client
- § 322:3 The importance of privacy and independent living for the elderly
- § 322:4 The importance of the availability of services that may be required
- § 322:5 The alternative kinds of independent living
- § 322:6 Continuing to live in the present home
- § 322:7 The importance of downsizing the older person's residence
- § 322:8 Moving to another city
- § 322:9 Selecting a retirement community

## **CHAPTER 323. LIVING FACILITIES FOR THE ELDERLY PROVIDED BY GOVERNMENT AND PRIVATE GROUPS**

- § 323:1 Living facilities to provide the needs of the elderly
- § 323:2 Facilities provided or licensed by the federal or state government for the elderly
- § 323:3 Illinois Veterans Homes
- § 323:4 Housing assistance for disabled veterans
- § 323:5 Facilities provided for the elderly by charities, private groups and others

## **CHAPTER 324. SUBSIDIZED HOUSING IN ILLINOIS**

- § 324:1 The Federal subsidized housing program
- § 324:2 The Illinois legislative policy on public housing and the Illinois Housing Development Act
- § 324:3 The application for tenancy and tenancy renewal
- § 324:4 Fraud by applicants for tenancy
- § 324:5 Determination of income for purpose of determining rent
- § 324:6 Schedule of maximum rents
- § 324:7 Termination of tenancy for housing of felon
- § 324:8 Rentals and tenant selection
- § 324:9 Assistance to elderly people to avoid unnecessary institutionalization
- § 324:10 Eligibility for assistance in staying at home
- § 324:11 Homelessness Prevention Act
- § 324:12 Government sponsored group housing
- § 324:13 Community integrated living arrangements

## **CHAPTER 325. ASSISTED LIVING AND SHARED HOUSING**

- § 325:1 The legislative purpose of assisted living and shared housing
- § 325:2 Definitions of the Assisted Living and Shared Housing Act
- § 325:3 What an assisted living facility is not
- § 325:4 The shared housing establishment
- § 325:5 What a shared housing establishment is not
- § 325:6 The licensing of assisted living and shared housing
- § 325:7 Alzheimers and dementia programs
- § 325:8 The residency requirements for assisted living and shared housing
- § 325:9 Rights of residents of assisted living or shared housing
- § 325:10 Conditions for admission and retention of residents
- § 325:11 Residents' records
- § 325:12 Abuse, neglect, and financial exploitation, prevention and reporting
- § 325:13 Mandatory services for residents
- § 325:14 Aiding with resident's medication
- § 325:15 Involuntary termination of residence in assisted living and shared housing

## **CHAPTER 326. NURSING HOMES**

- § 326:1 Definitions in the Nursing Home Act
- § 326:2 General rules governing nursing homes
- § 326:3 The admission of residents to nursing homes
- § 326:4 The rights of nursing home residents
- § 326:5 The standards of care and treatment of nursing home residents
- § 326:6 The protection of residents' rights and property
- § 326:7 The right of dying residents—Do Not Resuscitate Orders
- § 326:8 The rights of Medicaid recipients
- § 326:9 The discharge or transfer of nursing home residents
- § 326:10 Handling the residents' complaints and grievances
- § 326:11 Legal claims against nursing homes

## **CHAPTER 327. HOSPITALS AND AMBULATORY CARE**

- § 327:1 The purpose of the Hospital Licensing Act
- § 327:2 Statutory definitions relating to hospitals

## TABLE OF CONTENTS

- § 327:3 Notice of discharge; aged and disabled patients on Medicare
- § 327:4 Do-not-resuscitate orders
- § 327:5 Use of restraints
- § 327:6 The hospital's duty to protect
- § 327:7 Liability of hospital for malpractice of doctors practicing there

## **CHAPTER 328. SKILLED CARE AND INTERMEDIATE CARE**

- § 328:1 Resident care policies
- § 328:2 Admission, retention, and discharge policies
- § 328:3 Contract between resident and facility
- § 328:4 Restraints
- § 328:5 Unnecessary, psychotropic, and antipsychotic drugs
- § 328:6 Serious incidents and accidents
- § 328:7 Medical care policies
- § 328:8 Medical emergencies
- § 328:9 Life-sustaining treatments
- § 328:10 Activity Program
- § 328:11 General
- § 328:12 Medical and personal care program
- § 328:13 Abuses and neglect
- § 328:14 Communication and visitation
- § 328:15 Confidentiality

## **CHAPTER 329. LONG TERM CARE**

- § 329:1 The elder care law firm's policy in advising clients about long term care
- § 329:2 The objectives and programs of the Illinois Department on Aging
- § 329:3 Programs to help avoid unnecessary institutionalization of elderly clients in long term care
- § 329:4 Long term care and supervision—The ombudsman program
- § 329:5 Senior benefits advocacy program *[Deleted]*

## **CHAPTER 330. LIFE CARE FACILITIES AND CONTRACTS**

- § 330:1 The Life Care Facilities Act
- § 330:2 The Life Care contract
- § 330:3 The need to have a permit to contract as a provider of life care

- § 330:4 The definitions in the Life Care Facilities Act
- § 330:5 The procedures for obtaining and retaining a permit to execute or extend life care contracts
- § 330:6 The penalty for violation of the Life Care Facility Act

## **CHAPTER 331. COUNSELING ABOUT THE ELDER CLIENT'S CARE**

- § 331:1 Counseling about the elder client's care
- § 331:2 The elder law firm as an elder care manager
- § 331:3 The "triggering event" that warns of the elderly client's need for special services
- § 331:4 Terminology used herein in connection with the care of elderly persons
- § 331:5 Factors that should be entered into making caregiving decisions
- § 331:6 Facts about the client that should be considered in devising and maintaining the Caregiving Plan

## **CHAPTER 332. AVOIDING UNSATISFACTORY ARRANGEMENTS FOR ELDER CARE**

- § 332:1 Avoiding unsatisfactory arrangements for elder care
- § 332:2 Problems created by living in unsatisfactory home environment
- § 332:3 Claims for care of the elderly people
- § 332:4 Conveyance of real estate in consideration of lifetime care
- § 332:5 Transfer of remainder interest, reserving life estate to elderly person
- § 332:6 The dangers of joint tenancies and similar devices
- § 332:7 Marriage by elderly person
- § 332:8 Transfers of substantial amounts of assets to family members and others

## **CHAPTER 333. ASSESSING THE ELDER CLIENT'S PRESENT AND FUTURE NEEDS AND RESOURCES**

- § 333:1 Assessing the client's resources and needs for care and services
- § 333:2 Assessing the client's present physical and mental condition—The geriatric evaluation
- § 333:3 Assessing the client's needs for special services, products and programs
- § 333:4 Assessing the sources of the various needed services

## TABLE OF CONTENTS

- § 333:5 Assessing the sources of volunteer help in obtaining needed services
- § 333:6 Assessing the sufficiency of the client's resources to pay all expenses as long as required

## **CHAPTER 334. THE CAREGIVING PLAN**

- § 334:1 The Caregiving Plan
- § 334:2 The objectives of the Caregiving Plan
- § 334:3 Preparing the Caregiving Plan
- § 334:4 Primary Caregiver
- § 334:5 The elder (geriatric) care manager

## **CHAPTER 335. THE FAMILY SUPPORT GROUP**

- § 335:1 Organizing the family support group
- § 335:2 Operating the family support group for the client's remaining years
- § 335:3 The "extended family" that can serve the special needs of the elderly client

## **CHAPTER 336. ADMINISTERING CARE FOR THE ELDERLY CLIENT**

- § 336:1 Dividing the caregiving and caregiving management activities among the elder care managers and available caregivers
- § 336:2 The role of the proactive elder care firm in managing the delivery of caregiving for the elderly client
- § 336:3 Creating procedures for the primary caregiver who is also the elder care manager
- § 336:4 Monitoring the professional geriatric care manager
- § 336:5 Assuring delivery of all necessary services when financial assistance from government firms or other sources is required
- § 336:6 Assuring good management by the elder care manager

## **CHAPTER 337. OBTAINING NEEDED SERVICES, PRODUCTS, AND PROGRAMS**

- § 337:1 Knowing the sources of services and products for older people and caregivers
- § 337:2 Providing all the needed legal services
- § 337:3 Obtaining help from agents under powers of attorney, trustees, guardians, etc.
- § 337:4 Obtaining help from bankers, trust officers, stock brokers, and financial planners

- § 337:5 Obtaining medical, hospitals, clinics, health, fitness and physical therapy
- § 337:6 Obtaining other professional services from dentists, ophthalmologists, pharmacists, etc.
- § 337:7 Obtaining products designed for the elderly
- § 337:8 Obtaining admission to sheltered care, assisted living, or nursing homes
- § 337:9 Obtaining residential facilities
- § 337:10 Obtaining household maintenance services, and other needed products and services
- § 337:11 Obtaining financial and investment advice and services

### **CHAPTER 338. CAREGIVING AND CARE MANAGEMENT IN RESIDENCES**

- § 338:1 Dealing with the frail elderly relative who insists on living alone
- § 338:2 The benefits of having the primary caregiver live with the client
- § 338:3 A move to a new home when the caregiver and client move in together
- § 338:4 Caregiving and care management for clients in a hospital or long-term care facility

### **CHAPTER 339. IMPROVING SUPPORT FOR CAREGIVERS**

- § 339:1 Understanding the unbearable burden that a caregiver may have to bear
- § 339:2 Advising the client and caregiver about all the sources of support and help for the elder person in declining health
- § 339:3 Services of the elder law firm and paralegals in easing the caregiver's burden
- § 339:4 Getting help from the caregiver's family
- § 339:5 Sources of useful information for caregivers

### **CHAPTER 340. MAXIMIZING THE SAFETY AND SECURITY OF THE ELDERLY**

- § 340:1 Creating, maintaining, and security for an aging person
- § 340:2 Possible actions to provide for a client's safety
- § 340:3 The prevention and correction of financial exploitation of older people
- § 340:4 Preventing and correcting abuse and neglect of elderly



TABLE OF CONTENTS

§ 340:5 Elder Abuse Prevention and Prosecution Act

**CHAPTER 341. THE ADULT PROTECTIVE SERVICES PROGRAM**

- § 341:1 The Adult Protective Services Act
- § 341:2 Definitions used in the Adult Protective Services Act
- § 341:3 Abbreviations used in the Adult Protective Services Act
- § 341:4 The Adult Protective Services Program of the Illinois Department on Aging
- § 341:5 Mandatory and limited mandatory requirement for reporting abuse, neglect, or financial exploitation of the elderly under the Adult Protective Services Act
- § 341:6 The Health Care Worker Background Check Act
- § 341:7 The Abused and Neglected Long Term Care Facility Residents Reporting Act (ANLTCFRAA)
- § 341:8 *[Deleted]*

**CHAPTER 342. THE ILLINOIS DOMESTIC VIOLENCE ACT—ORDERS OF PROTECTION**

- § 342:1 The Illinois Domestic Violence Act
- § 342:2 The persons protected by orders of protection
- § 342:3 Access of high-risk adults
- § 342:4 The procedures for obtaining an order of protection
- § 342:5 The order of protection
- § 342:6 The enforcement of orders of protection
- § 342:7 Penalties for violation of orders of protection
- § 342:8 Violation of no contact orders

**CHAPTER 343. OTHER CRIMINAL STATUTE THAT PROTECT THE ELDERLY**

- § 343:1 Criminal punishment for the neglect, abuse, or financial exploitation of the elderly
- § 343:2 Financial exploitation of elderly or disabled persons
- § 343:3 Criminal abuse or neglect of an elderly person with a disability
- § 343:4 The abuse and criminal neglect of a long term care resident
- § 343:5 *[Deleted]*
- § 343:6 Domestic battery and aggravated domestic battery

**CHAPTER 344. CIVIL REMEDIES FOR ABUSE OF THE ELDERLY**

- § 344:1 Civil remedies available to the abused, neglected, or financially exploited elderly

- § 344:2 Forfeiture of certain benefits from the elderly by persons who have inflicted abuse, neglect, or financial exploitation upon them
- § 344:3 Remedies not involving court action to correct abuse of the elderly
- § 344:4 Civil actions for wrongs committed against elderly people
- § 344:5 Improvement of elderly person's money management practices to avoid financial exploitation
- § 344:6 The misuse of Powers of Attorney for Property in abuse of the elderly cases

## **CHAPTER 345. COUNSELING ELDER CLIENTS ABOUT HEALTH AND PHYSICAL FITNESS**

- § 345:1 The importance of maximum physical health and fitness in assuring long, happy old age
- § 345:2 Available activities that improve a client's health and physical fitness
- § 345:3 Including all sources of health and fitness improvement in the firm's database

## **CHAPTER 346. THE CLIENT'S RIGHT TO MAKE HEALTH DECISIONS AND THE REQUIREMENT OF THE CLIENT'S INFORMED CONSENT**

- § 346:1 Client's right to make health decisions
- § 346:2 The need for valid informed consent of client or authorized person
- § 346:3 Right of others to make health decisions
- § 346:4 Impact of Health Care Surrogate Act on informed consent right
- § 346:5 The requirements for establishing an informed consent
- § 346:6 The emergency exception to the informed consent requirement

## **CHAPTER 347. HOSPITAL SERVICES FOR THE ELDERLY**

- § 347:1 The Hospital Licensing Act
- § 347:2 The requirement that hospitals furnish emergency service
- § 347:3 The Ambulatory Surgical Treatment Center Act
- § 347:4 The purposes of the Hospital Licensing Act

## TABLE OF CONTENTS

|          |  |
|----------|--|
| § 347:5  | Definitions used in the Hospital Licensing Act   |
| § 347:6  | Hospital's compliance with the domestic violence established by the Illinois Department of Public Health |
| § 347:7  | The requirement of notice of discharge to aged and disabled patients on Medicare                         |
| § 347:8  | Resident and intern duty hour requirements   |
| § 347:9  | Public disclosure of information   |
| § 347:10 | Confidentiality of patient records   |
| § 347:11 | Do-not-resuscitate orders  |
| § 347:12 | Use of restraints  |
| § 347:13 | Medical staff privileges   |
| § 347:14 | Clinical privileges; advanced practice nurses  |
| § 347:15 | Requirements for employment of physicians  |
| § 347:16 | Prohibition of mandated nurse overtime   |

## **CHAPTER 348. PHYSICIANS AND SURGEONS FOR THE ELDERLY**

|          |  |
|----------|--|
| § 348:1  | The Medical Practices Act of 1987, 225 ILCS 80/1 and some of its definitions |
| § 348:2  | License requirements imposed by Medical Practice Act                         |
| § 348:3  | Inapplicability of Act (Exemptions)  |
| § 348:4  | The Illinois State Medical Board   |
| § 348:5  | The Complaint Committee  |
| § 348:6  | <i>[Reserved]</i>  |
| § 348:7  | Criminal background check  |
| § 348:8  | The penalty for practice of medicine without a license                       |
| § 348:9  | The Patient's Right to Know Law  |
| § 348:10 | Grounds for disciplinary action  |
| § 348:11 | Violations investigations  |
| § 348:12 | Disciplinary actions   |

## **CHAPTER 349. NURSING SERVICES FOR THE ELDERLY**

|         |                                       |
|---------|---------------------------------------|
| § 349:1 | The Nurse Practice Act                |
| § 349:2 | Definitions in the Nurse Practice Act |
| § 349:3 | Application to practice nursing       |
| § 349:4 | Prohibited acts                       |
| § 349:5 | Qualifications for APRN licensure     |
| § 349:6 | Written collaborative agreement       |
| § 349:7 | APRN scope of practice                |
| § 349:8 | Qualifications for RN licensure       |

- § 349:9 RN scope of practice
- § 349:10 Qualifications for LPN licensure
- § 349:11 LPN scope of practice
- § 349:12 Home Health, Home Services, and Home Nursing  
Agency Licensing Act
- § 349:13 Definitions in the Home Health Act
- § 349:14 License requirements for home health services

## **CHAPTER 350. COUNSELING ELDERLY CLIENTS AND THEIR FAMILIES ABOUT MENTAL PROBLEMS**

- § 350:1 Counseling clients and their families when a client  
has a mental problem
- § 350:2 State provided and controlled mental services
- § 350:3 List of State Mental Health facilities and programs
- § 350:4 Rights of recipients of Mental Health services
- § 350:5 The Community Services Act
- § 350:6 The Community Support Systems Act
- § 350:7 Protection and Advocacy for Mentally Ill Person Act
- § 350:8 Home-based support services for mentally disabled  
persons
- § 350:9 Liability for services, responsible relatives, and  
exemptions
- § 350:10 Self-Sufficiency Trust Fund
- § 350:11 The Home-Based Support Program

## **CHAPTER 351. THE MENTAL HEALTH TREATMENT PREFERENCE DECLARATION ACT**

- § 351:1 The Mental Health Treatment Preference  
Declaration Act
- § 351:2 Definitions in the Mental Health Treatment  
Preference Declaration Act
- § 351:3 The declaration of preference or instructions
- § 351:4 The designation of an attorney-in-fact
- § 351:5 Restrictions on who may serve as attorney-in-fact
- § 351:6 Preparing the Mental Health Treatment Preference  
Declaration
- § 351:7 Signing and witnessing the Mental Health  
Treatment Preference Declaration
- § 351:8 Declaration as part of the patient's medical record
- § 351:9 Authority of attorney-in-fact
- § 351:10 Principal's wishes must be followed
- § 351:11 Immunity of physician or provider

## TABLE OF CONTENTS

- § 351:12 Revocation of Mental Health Treatment Preference Declaration
- § 351:13 Withdrawal of attorney-in-fact
- Appendix A. Forms

## **CHAPTER 352. INFORMAL AND VOLUNTARY ADMISSION TO MENTAL HEALTH FACILITY**

- § 352:1 Voluntary admission of adults to mental health facilities
- § 352:2 The application for voluntary admission to mental health facilities
- § 352:3 Denial of application for voluntary admission to mental health facility
- § 352:4 Need for periodic reaffirmation of voluntary applicant to remain in mental health facility
- § 352:5 Discharge from mental health facility of voluntary applicant

## **CHAPTER 353. INVOLUNTARY ADMISSIONS TO MENTAL HEALTH FACILITIES**

- § 353:1 Immediate involuntary hospitalization to mental health facility
- § 353:2 The petition for involuntary admission to mental health facility
- § 353:3 Requirements for filing petition for involuntary admission to mental health facility
- § 353:4 Detention of respondent and further proceedings pending entry of further notice
- § 353:5 Treatment of respondent pending further order of court
- § 353:6 Filing, notice, and hearing date for petition for emergency involuntary hospitalization
- § 353:7 The petition and certificate for involuntary admission to mental health facility
- § 353:8 Examination of the respondent
- § 353:9 Notice of the hearing—Pre-disposition report
- § 353:10 The court hearing
- § 353:10.50 The state's burden of proving a person is subject to involuntary commitment
- § 353:11 Orders disposing of petition
- § 353:12 The treatment plan—Administering psychotropic medication

- § 353:13 Discharge by the facility director
- § 353:14 Petition for discharge
- § 353:15 The hearing and court order

## **CHAPTER 354. COMMUNITY INTEGRATED LIVING ARRANGEMENTS FOR THE MENTALLY ILL AND THE DEVELOPMENTALLY DISABLED**

- § 354:1 The services provided pursuant to the Community Integrated Living Arrangements Licensure and Certification Act
- § 354:2 The licensing of community integrated living arrangements
- § 354:3 The purposes of the system of licensure under the Act
- § 354:4 The administration of the licensure system under the Act
- § 354:5 Special needs trust-supported residential care
- § 354:6 Continuum of care services

### **Table of Laws and Rules**

### **Table of Cases**

### **Index**