

Table of Contents

CHAPTER 1. BEGINNING THE PROCESS

I. CLIENT INTERVIEWS AND INFORMATION

- § 1:1 Initial client contact
- § 1:2 Client questionnaire—Family information
- § 1:3 Initial conference—Client’s side of the desk
- § 1:4 —Attorney’s side of the desk
- § 1:5 Asset worksheet

II. ESTATE PLAN

- § 1:6 Formulating estate plan
- § 1:7 Attorney’s billing, and letter of instructions—Billing
- § 1:8 Ethical considerations

Appendix A. Engagement Letter for Couple

Appendix B. Engagement Letter for Individual

CHAPTER 2. WILLS AND EXECUTORS

I. WILLS IN GENERAL

- § 2:1 Definition, and right to make will
- § 2:2 Competency to make will—In general
- § 2:3 —Mental capacity
- § 2:4 Undue influence
- § 2:5 Writing requirements
- § 2:6 Execution—In general
- § 2:7 —Competency of witnesses
- § 2:8 Proving will
- § 2:9 Foreign wills
- § 2:10 Revocation and revivor—In general
- § 2:11 —Revocation by marriage
- § 2:12 —Revocation by divorce
- § 2:13 —Revivor
- § 2:14 Joint wills

II. BEQUESTS AND DEVICES

- § 2:15 Anti-lapse statute—In general

- § 2:16 —Application to class gifts
- § 2:17 —Effect of lapse
- § 2:18 Pretermitted children
- § 2:19 Ademption
- § 2:20 Advancements

III. EXECUTOR

- § 2:21 Choosing an executor
- § 2:22 Outline of executor duties

IV. LIVING WILLS AND HEALTH CARE SURROGATES

- § 2:23 Living wills and health care surrogates
- § 2:24 Powers of attorney

CHAPTER 3. TRUSTS AND TRUSTEES

- § 3:1 Introduction

I. TYPES OF TRUSTS

- § 3:2 Inter vivos and testamentary trusts—In general
- § 3:3 Types of trusts—Use of funded inter vivos, or living trust
- § 3:4 A-B trust—Lessen federal estate taxes
- § 3:5 Q-TIP trust
- § 3:6 Disclaimer trust
- § 3:7 Charitable remainder trust
- § 3:8 Supplemental needs trust
- § 3:9 Income only trust
- § 3:10 Crummey trust
- § 3:11 Generation-skipping trust
- § 3:12 Minor's or 2503(c) trust
- § 3:13 Trust for multiple beneficiaries
- § 3:14 Spendthrift trust
- § 3:15 Standby trust

II. TRUSTEES—IN GENERAL

- § 3:16 Considerations in choosing a trustee
- § 3:17 Right to remove corporate trustee
- § 3:18 Individual trustees

III. TRUSTEES—POWERS

- § 3:19 Powers over principal—In general

TABLE OF CONTENTS

- § 3:20 —Planning pointer—Limiting power to distribute principal to ascertainable standard
- § 3:21 Power to discharge trustee's support obligation—In general
- § 3:22 —Planning pointer—Independent co-trustee
- § 3:23 Power to sprinkle income—In general
- § 3:24 —Planning pointer—Use of corporate trustee
- § 3:25 Life insurance on trustee's life—In general
- § 3:26 —Planning pointer—Use of corporate or independent trustee
- § 3:27 Individual successor trustee
- § 3:28 Uniform Trust Code

CHAPTER 4. TAX JURISDICTION

I. KENTUCKY INHERITANCE TAX JURISDICTION

- § 4:1 Introduction
- § 4:2 Real property
- § 4:3 Tangible personal property
- § 4:4 Intangible personal property
- § 4:5 Tax jurisdiction over nonresidents, in general
- § 4:6 Intangible personalty of nonresident held by Kentucky trustee

II. FEDERAL ESTATE TAX JURISDICTION

- § 4:7 Federal tax jurisdiction, in general

CHAPTER 5. TAXATION OF TRANSFERS BY WILL OR INTESTATE SUCCESSION

- § 5:1 Introduction
- § 5:2 Effect of renunciations or disclaimers for Kentucky inheritance tax purposes—In general
- § 5:3 —Planning pointer—Use of disclaimer
- § 5:4 — —Trust for disclaimed property
- § 5:5 Effect of disclaimers for federal estate tax purposes—In general
- § 5:6 —Planning pointer—Use of disclaimer to save gift tax or preserve exclusion
- § 5:7 — —Use of disclaimer trust
- § 5:8 Effect of compromise agreements for Kentucky inheritance tax purposes

- § 5:9 Effect of compromise agreements for federal estate tax purposes
- § 5:10 Effect of antenuptial agreement—In general
- § 5:11 —Planning pointer—Using the Cochran doctrine
- § 5:12 Effect of exonerating bequest from tax

CHAPTER 6. TAXATION OF TRANSFERS IN CONTEMPLATION OF DEATH

- § 6:1 Introduction
- § 6:2 Judicial analysis of Kentucky contemplation of death statute—In general
- § 6:3 —Planning pointer—Avoiding tax on transfers within three years of death
- § 6:4 Transfers into joint ownership—In general
- § 6:5 —Jointly owned certificates of deposit
- § 6:6 —Planning pointer—Using jointly owned certificate of deposit (CD)
- § 6:7 Federal treatment of transfers in contemplation of death—In general
- § 6:8 —Effect of unified transfer tax
- § 6:9 —Planning pointer—Gift of property expected to appreciate

CHAPTER 7. TAXATION OF TRANSFER EFFECTIVE AT DEATH

- § 7:1 Introduction—Kentucky approach
- § 7:2 —Federal approach
- § 7:3 Retention of life interest by transferor—Kentucky approach
- § 7:4 —Federal approach
- § 7:5 —Planning pointer—Use of trust may have unexpected tax costs
- § 7:6 Retention of reversionary or remainder interest by transferor—Kentucky approach
- § 7:7 —Federal approach
- § 7:8 —Planning pointer—Use of revocable or testamentary trust
- § 7:9 Retention by transferor of power to revoke—Kentucky approach
- § 7:10 —Federal approach
- § 7:11 —Planning pointer—Donor serving as trustee

TABLE OF CONTENTS

CHAPTER 8. TAXATION OF JOINTLY OWNED PROPERTY

- § 8:1 Kentucky approach to taxation of jointly owned property
- § 8:2 Contemplation of death statute and certificates of deposit
- § 8:3 Federal approach to taxation of jointly owned property—Joint interests defined
- § 8:4 —Joint interests not held by spouses
- § 8:5 —Joint interests held by spouses

CHAPTER 9. POWERS OF APPOINTMENT

- § 9:1 Powers of appointment as an estate planning tool
- § 9:2 Inheritance taxes and powers of appointment—In general
- § 9:3 —Kentucky approach to taxation of powers of appointment
- § 9:4 Comparison of Kentucky and federal approaches
- § 9:5 Tax advantages from use of trust
- § 9:6 Federal estate and gift tax provisions
- § 9:7 Use of limited powers of appointment for federal estate tax purposes
- § 9:8 Requirement for ascertainable standard for exercising limited power of appointment
- § 9:9 The nontaxable “5 and 5” power
- § 9:10 Residuary clause in will as exercise of power of appointment

CHAPTER 10. LIFE INSURANCE

I. TYPES OF LIFE INSURANCE

- § 10:1 In general
- § 10:2 Term life insurance
- § 10:3 Whole life insurance
- § 10:4 Universal life insurance
- § 10:5 Variable life insurance

II. TAXATION OF INSURANCE

- § 10:6 Income taxation of benefits received during lifetime
- § 10:7 Income taxation of benefits received following death

- § 10:8 Kentucky inheritance taxation of life insurance—In general
- § 10:9 —Federal approach contrasted
- § 10:10 —Credit life insurance
- § 10:11 —Planning pointer—Avoiding credit life insurance inheritance tax problem
- § 10:12 —Paid-up life insurance
- § 10:13 —Planning pointer—Avoiding problem of paid-up policies
- § 10:14 Federal estate taxation of life insurance—In general
- § 10:15 —Planning pointer—Gifts of policy or premiums, or purchase of policy by beneficiary

III. LIFE INSURANCE TRUSTS

- § 10:16 Revocable life insurance trusts—In general
- § 10:17 —Planning pointer—Choosing inter vivos or testamentary trust
- § 10:18 — —Life insurance trust as planning tool under Kentucky inheritance tax exclusion
- § 10:19 Irrevocable life insurance trusts—In general
- § 10:20 —Payment of premiums
- § 10:21 —Planning pointer—Insurance trust terms
- § 10:22 — —Providing flexibility in an irrevocable trust

CHAPTER 11. RETIREMENT PLANS AND BENEFITS

- § 11:1 Introduction

I. TYPES OF RETIREMENT PLANS

- § 11:2 Pension plan—In general
- § 11:3 —Planning pointer—Pension plan for small business with older owner
- § 11:4 Profit-sharing plan—In general
- § 11:5 —Planning pointer—Profit-sharing plan for business with younger business owner
- § 11:6 Money purchase plan—In general
- § 11:7 —Planning pointer—Simplified administration plus fixed commitment to plan
- § 11:8 401(k) plans—In general
- § 11:9 —Pay discrimination rules
- § 11:10 —Planning pointer—Pay discrimination rules

TABLE OF CONTENTS

- § 11:11 Keogh or HR-10 plans
- § 11:12 Simplified employee pension plan (SEP)
- § 11:13 Individual retirement account (IRA)—In general

II. PLAN PROVISIONS AND OPERATION

- § 11:14 Participation, vesting, and nondiscrimination
- § 11:15 —Participation
- § 11:16 —Vesting
- § 11:17 —Nondiscrimination
- § 11:18 Top-heavy plans—In general
- § 11:19 —Vesting, contributions, and benefits in top-heavy plan
- § 11:20 —Planning pointer—Integrating plan benefits with Social Security
- § 11:21 Tax penalties involving distributions—Introduction
- § 11:22 —Premature distributions
- § 11:23 —Distributions under required minimum distribution rules (RMD)
- § 11:24 Distributions during lifetime—In general
- § 11:25 —Planning pointer—Lump sum versus installment
- § 11:26 Kentucky inheritance taxation—In general
- § 11:27 —Specific plans excluded from tax
- § 11:28 —Planning pointer—Trusts
- § 11:29 —Treatment of IRAs
- § 11:30 Federal estate taxation—In general

CHAPTER 12. INHERITANCE AND ESTATE TAX DEDUCTIONS, EXEMPTIONS, AND RATES

- § 12:1 Introduction

I. DEDUCTIONS FOR DEBTS AND EXPENSES

- § 12:2 Debts of decedent
- § 12:3 Interest on debts
- § 12:4 Payments incident to divorce
- § 12:5 Debts barred by statute of limitations
- § 12:6 Funeral expenses
- § 12:7 Administrative expenses
- § 12:8 Accrued and unpaid taxes—In general
- § 12:9 —When taxes are “accrued”
- § 12:10 Federal adjusted gross estate

II. KENTUCKY INHERITANCE TAX EXEMPTIONS

- § 12:11 Types of exemptions
- § 12:12 Personal exemptions; exemption schedule based on kinship
- § 12:13 Charitable exemptions

III. MARITAL DEDUCTION PLANNING

- § 12:14 Historical background of marital deduction
- § 12:15 Overview of basic requirements for marital deduction
- § 12:16 Requirement that decedent be survived by spouse—In general
- § 12:17 —Simultaneous death of parties
- § 12:18 —Planning pointer—Presumption of survivorship
- § 12:19 Requirement that property must pass to survivor
- § 12:20 Requirement that property must be includible in gross estate
- § 12:21 Terminable interest rule—In general
- § 12:22 —Terminable interests
- § 12:23 —Interest conditioned on spouse's surviving for fixed period
- § 12:24 Major exceptions to terminable interest rule—Life estate with general power of appointment
- § 12:25 —Qualified terminable interest property (Q-TIP) election
- § 12:26 Marital deduction and portability
- § 12:27 Tax planning through use of marital deduction, portability and the exclusion amount

IV. INHERITANCE AND ESTATE TAXES

- § 12:28 Kentucky inheritance tax rates and credits
- § 12:29 —Tax rates
- § 12:30 —Credit for prior tax paid
- § 12:31 Kentucky estate tax
- § 12:32 Federal estate tax rates and credits—Determining taxable estate and computing tax
- § 12:33 —Credits
- § 12:34 Payment of Kentucky inheritance tax—In general
- § 12:35 —Installment payments
- § 12:36 Payment of federal estate tax

TABLE OF CONTENTS

CHAPTER 13. VALUATION OF ASSETS

§ 13:1 Introduction

I. VALUATION OF REAL ESTATE

§ 13:2 Valuation of real estate, generally—Introduction

§ 13:3 —Cost approach

§ 13:4 —Market data approach

§ 13:5 —Income approach

§ 13:6 Special use valuation of agricultural or horticultural land for Kentucky inheritance tax purposes—In general

§ 13:7 —Use of land for agricultural or horticultural purposes

§ 13:8 —Fair cash value to comprise over fifty percent of gross estate

§ 13:9 —Qualified beneficiaries

§ 13:10 —Planning pointer—Disclaimer by surviving spouse

§ 13:11 Special use valuation of farm or closely held business for federal estate tax purposes—In general

§ 13:12 —Valuation of farm real estate generally

§ 13:13 —Valuation of real estate in closely held businesses and certain farms

§ 13:14 —Requirements for applying special use valuation

II. VALUATION OF PERSONAL PROPERTY

§ 13:15 Valuation of tangible personal property

§ 13:16 Valuation of intangible personal property—In general

§ 13:17 —Securities listed on stock exchange

§ 13:18 —Effect of dividends

§ 13:19 —Valuation of bonds

§ 13:20 Valuation of closely held stock—Guidelines and approaches

§ 13:21 Valuation of closely-held stock—Book value approach

§ 13:22 Capitalization of income approach to valuing stock—In general

§ 13:23 —Determining income

§ 13:24 —Capitalization rate

§ 13:25 Discounting minority interests in closely held businesses

§ 13:26 Effect of buy-sell agreements

CHAPTER 14. GIFTS AND GIFT TAXATION IN ESTATE PLANNING

I. GENERAL CONSIDERATIONS

- § 14:1 Introduction
- § 14:2 Advantages of gift giving
- § 14:3 Elements of gift and application of tax—Elements of gift
- § 14:4 —Application of tax
- § 14:5 —Gift tax return and payment of tax
- § 14:6 —Gift pursuant to power of attorney

II. SPECIAL CONSIDERATIONS

- § 14:7 Gifts of services
- § 14:8 Disclaimers
- § 14:9 Assignment of income
- § 14:10 Delivery of gift

III. ANNUAL EXCLUSION AND SPLIT GIFTS

- § 14:11 Annual exclusion—In general
- § 14:12 —Planning pointer—Gifts to child under 21
- § 14:13 Gift splitting

IV. INCOME TAX BASIS IN GIFT PROPERTY

- § 14:14 Donee must use donor's adjusted income tax basis—In general
- § 14:15 —Planning pointer—Use of higher basis property for inter vivos gift
- § 14:16 — —Gift to ill spouse and bequest back

V. TRANSFERS NOT SUBJECT TO GIFT TAX

- § 14:17 Transfers subject to marital deduction
- § 14:18 Charitable transfers
- § 14:19 Transfers for tuition or medical expenses

VI. GIFTS FOR THE BENEFIT OF CHILDREN

- § 14:20 Taxation of income from gift to child—In general

TABLE OF CONTENTS

- § 14:21 —Planning pointer—Options for creating educational funds

VII. SPECIAL SITUATIONS

- § 14:22 Net gifts—In general
- § 14:23 —Planning pointer—Use of “Crummey” trust
- § 14:24 Taxation of income from gift to child—Planning pointer—Use of life insurance
- § 14:25 Gift of property subject to debt

CHAPTER 15. GENERATION-SKIPPING TRANSFER TAX

- § 15:1 Introduction

I. OVERVIEW OF GENERATION-SKIPPING TRANSFER TAX

- § 15:2 Tax rate, exemption and taxable transfers, in general
- § 15:3 Skip person and transferor defined—Skip person
- § 15:4 —Transferor
- § 15:5 Taxable distribution
- § 15:6 Taxable termination
- § 15:7 Direct skip

II. SPECIAL PROBLEM AREAS

- § 15:8 Pot trusts—In general
- § 15:9 —Planning pointer—Use of exemption or separate trusts
- § 15:10 Spendthrift trust for beneficiary’s lifetime—In general
- § 15:11 —Planning pointer—Use of power of appointment
- § 15:12 Liability for tax and provision for payment—In general
- § 15:13 —Planning pointer—Providing for payment of tax in will and trust
- § 15:14 Disclaimers—In general
- § 15:15 —Planning pointer—Charging transfer tax to bequest in event of disclaimer
- § 15:16 Gift tax and generation-skipping transfer tax
- § 15:17 Use of exemption—In general

CHAPTER 16. GENERAL WILL AND TRUST FORMS

- § 16:1 Master will
- § 16:2 Pour over will
- § 16:3 Durable general power of attorney
- § 16:4 Health care power of attorney
- § 16:5 Pre-marital agreement
- § 16:6 Single person inter vivos trust
- § 16:7 Joint trust
- § 16:8 Marital and credit shelter trust
- § 16:9 Will with testamentary trust for couple with
handicapped child/person
- § 16:10 Inter vivos trust for handicapped child or person/
special needs trust/supplemental care trust

APPENDICES

- APPENDIX A. Kentucky Revised Statutes (Selected Provisions)
- APPENDIX B. Kentucky Revenue Cabinet Policies
- APPENDIX C. Kentucky Revenue Cabinet Circulars

Table of Laws and Rules

Table of Cases

Index