Elder Law Quick-Start Guide (see page xxvii at front of book)

# Volume 14

# CHAPTER 1. SCOPE OF ELDER LAW

# A. SCOPE OF ELDER LAW

§ 1:1	What is elder law
§ 1:2	—Disability planning
§ 1:3	—Estate planning
§ 1:4	—Contracts
§ 1:5	—Insurance and government services
	—Real estate
§ 1:7	—Tort law
§ 1:8	—Criminal law
§ 1:9	—Administrative law
§ 1:10	—Taxation
§ 1:11	—Financial planning
§ 1:12	—Referrals to health care professionals
§ 1:13	—Counseling
§ 1:14	—Living arrangements
§ 1:15	Planning for the lifetime needs of the elderly clien
§ 1:16	—Identifying specialized federal programs
§ 1:17	-Role of community organizations and charitable
	agencies
§ 1:18	List of lifetime needs

# B. MULTI-DIMENSIONAL APPROACH

§ 1:19 —Tools of the trade

§ 1:20	Referrals to other professionals and in-house integration of multi-disciplinary services
§ 1:21	Referrals from attorney to other professionals—Social workers
§ 1:22	—Gerontologists
§ 1:23	—Mental health professionals
§ 1:24	—Geriatric care managers and "paper children"
§ 1:25	—Financial counselors
§ 1:26	—Funeral service providers
§ 1:27	Liability for referrals

### C. DYNAMIC NATURE OF ELDER LAW

- § 1:28 Evolution of the law
- § 1:29 —Euthanasia and assisted suicide
- § 1:30 Medical advancements
- § 1:31 Socio-economic studies
- § 1:32 Effect of the baby boomers

# D. OFFICE PRACTICE TIPS

- § 1:33 Location
- § 1:34 Office decor and design
- § 1:35 Attorney's conduct
- § 1:36 Informal client interview
- § 1:37 Fee structuring
- § 1:38 —Fixed-fee billing schedule
- § 1:39 —Time billing
- § 1:40 —Initial consultation fee
- § 1:41 —Community standards
- § 1:42 —Pro bono publico
- § 1:43 Intake memorandum and client interviews

# E. MARKETING

- § 1:44 Marketing
- § 1:45 Lectures
- § 1:46 News releases
- § 1:47 News stories
- § 1:48 Newsletters
- § 1:49 Alerts
- § 1:50 Informative letters
- § 1:51 Web page
- § 1:52 Firm brochure

# F. FORMS

- § 1:53 Letter to referred professional
- § 1:54 Referral form
- § 1:55 Basic intake memorandum
- § 1:56 Acknowledgment of referral
- § 1:57 Medicaid planning information
- § 1:58 Estate planning intake memorandum
- § 1:59 Letter eliciting lecture dates
- § 1:60 News release
- § 1:61 —Honor received
- § 1:62 News story

- § 1:63 Advanced health care directives alert
- § 1:64 Information letter
- § 1:65 Firm brochures
- § 1:66 Conflict of interest disclosure
- § 1:67 Disclosure of auxiliary services
- § 1:68 Advanced Care & Estate Planning (Non-Refundable Retainer)
- § 1:69 Analysis and Client Report, Family Asset Protection Planning, Representation and Fee Agreement (Non-Refundable Retainer)
- § 1:70 Estate & Incapacity Planning, Representation and Fee Agreement
- § 1:71 Family Asset Protection Planning Representation and Fee Agreement (Non-Refundable Retainer)
- § 1:72 Legal Services, Representation and Fee Agreement

# CHAPTER 2. COMMUNITY RESOURCES FOR THE ELDER LAW ATTORNEY

# A. LAYERING RESOURCES FOR THE ELDER LAW CLIENT

- § 2:1 Elder law attorney as social worker
- § 2:2 Hiring a social worker or geriatric care manager
- § 2:3 Affiliating with a social worker or geriatric care manager
- § 2:4 Becoming knowledgeable in community resources
- § 2:5 Meager government resources

# B. LIMITING LIABILITY AND CREATING OFFICE PROCEDURES FOR REFERRALS

- § 2:6 Creating a referral directory
- § 2:7 Disclosing the limits of "the list"
- § 2:8 Multiple referrals and best interests
- § 2:9 Malpractice insurance

# C. DEVELOPING COMMUNITY RESOURCES

- § 2:10 Elder care resources
- § 2:11 An integrated approach to Elder Law

# CHAPTER 3. ETHICAL DUTIES

# A. ETHICAL DUTIES OWED TO THE CLIENT

§ 3:1 Rules of professional conduct

§ 3:2	—Scope of representation
§ 3:3	—Communication
§ 3:4	—Conflicts of interest
§ 3:5	——Competent representation and no gift from client
§ 3:6	——Demands of the heirs
§ 3:7	——Auxiliary services
§ 3:8	—Clients under a disability and Clients with
	Diminished Capacity
§ 3:9	—Fees

### **B. CONFIDENTIALITY OF INFORMATION**

§ 3:10 Confidentiality of information—Generally
§ 3:11 —Privacy of medical information
§ 3:12 —Duty owed to third persons
§ 3:13 —Duty owed to guardianship ward

### C. FORMS

§ 3:14 Disclosure of conflict of interest

# CHAPTER 4. REPRESENTING THE TERMINALLY ILL CLIENT

# A. REPRESENTING THE TERMINALLY ILL CLIENT

§ 4:1 Lawyer as counselor
§ 4:2 Effect of the client's discomfort
§ 4:3 Assessing psychological factors
§ 4:4 Dealing with the client's mood swings
§ 4:5 Caregivers' compensation
§ 4:6 Euthanasia and assisted suicide
§ 4:7 Autopsy

Organ donation and funeral plans

# B. EMOTIONS OF THE TERMINALLY ILL CLIENT

§ 4:9 On death and dying and elder law § 4:10 Denial and isolation § 4:11 —Refusal to take legal action —Counseling problems § 4:12 § 4:13 Anger § 4:14 Bargaining Depression § 4:15 —Identifying depression § 4:16

§ 4:8

- § 4:17 —Attorney's role as protector
- § 4:18 ——Distinguishing depression from incapacity
- § 4:19 ——Suicide
- § 4:20 Acceptance
- § 4:21 —Characteristic behavior
- § 4:22 —Attorney's role as mediator or emissary

# CHAPTER 5. PREVENTING ABUSE AND NEGLECT

### A. TYPES OF ABUSE

- § 5:1 Introduction
- § 5:2 —Physical abuse
- § 5:3 —Financial abuse
- § 5:4 —Emotional abuse
- § 5:5 —Neglect

### B. RECOGNIZING ABUSE

- § 5:6 Identification of signs of abuse
- § 5:7 —Difficulties in identification
- § 5:8 ——Client's embarrassment
- § 5:9 ——Protection of relatives
- § 5:10 ——Fear of reprisals
- § 5:11 ——Client's lack of proof
- § 5:12 ——Nowhere to run
- § 5:13 ——Fear of incompetency
- § 5:14 —Outward signs of abuse
- § 5:15 ——Marks
- § 5:16 ——Festering wounds
- § 5:17 ——Silence
- $\S 5:18$  ——Twitching
- § 5:19 Difficult or fidgety body movements
- § 5:20 ——Depression
- § 5:21 ——Self-deprecation
- § 5:22 ——Appearance
- § 5:23 ——Environment
- § 5:24 ——Refusal to discuss matters
- $\S 5:25$  Reclusion

#### C. REMEDIES

- § 5:26 Seeking redress
- § 5:27 —Rules of Professional Conduct

- § 5:28 — —Confidentiality —Reconciling the conflicts § 5:29 § 5:30 -Abuse hotline —Guardianship § 5:31 § 5:32 —Criminal action § 5:33 — — Mail fraud scams § 5:34 —Civil lawsuits § 5:35 Seeking prevention—Informal counsel § 5:36 —Help by others § 5:37 -Trusts § 5:38 —Powers of attorney § 5:39 -Bank accounts § 5:40 —Personal and community support mechanisms D. FLORIDA ABUSE STATUTES § 5:41 Fla. Stat. Ch. 415 § 5:42 -Reporting abuse and exploitation
- § 5:43 —Criminal penalties § 5:44 — Failure to report § 5:45 ——False reports — —Interference with investigation § 5:46 § 5:47 — —Confidentiality § 5:48 —Criminal abuse, neglect, and exploitation —Persons in position of trust and confidence § 5:49 § 5:50 —Civil penalties § 5:51 —Practical problems on reporting § 5:52 Fla. Stat. Ch. 400 § 5:53 —Florida's Office of Financial Regulation § 5:54 — —Banking, securities, and loans Fla. Stat. § 400.0060 et seg—Florida's Office of § 5:55 Financial Regulation—Funeral and cemetery companies § 5:56 -Lawyers § 5:57 Regulations by DOEA Fla. Stat 825.103 exploitation of an elderly person, § 5:58 vulnerable adult or disabled adult The five types of exploitation set out pursuant to Fla. § 5:59 Stat 825.103 for which injunctive relief can be sought Fla. Stat. 825.1035 injunction for protection against § 5:60

exploitation of a vulnerable adult

Ex parte injunction and relief

§ 5:61

# CHAPTER 6. GENERAL CONSIDERATIONS IN ESTATE PLANNING

### A. INTRODUCTION

§ 6:1	Tailoring the estate plan
§ 6:2	—Client's sophistication and capacity

- § 6:3 Judging incapacity
- § 6:4 Tailoring the estate plan—Client's sophistication— Financial management
- § 6:5 —Family needs, lifestyles, and traditions
- § 6:6 ——Family feuds
- § 6:7 ——"Special" heirs
- § 6:8 ——Handicapped heirs
- § 6:9 —Preserving eligibility for government assistance

# B. UNIFIED PLANNING

- § 6:10 Balancing lifetime and post mortem needs in a uniform plan
- § 6:11 Estate planning options
- § 6:12 Basic information needed to recommend an estate plan
- § 6:13 —Intake memos
- § 6:14 ——Mailing intake questionnaires to the client
- § 6:15 Client interview
- § 6:16 —Identify all possible heirs and adopted or deceased children
- § 6:17 ——Virtual adoption
- § 6:18 —"Enoch Arden" decrees
- § 6:19 —Alternative disposition of assets
- § 6:20 —Probate avoidance
- § 6:21 —Estate size
- § 6:22 ——Reducing the taxable estate

#### C. MARRIAGE ARRANGEMENTS

- § 6:23 Client interview—Avoidance of creditor claims
- § 6:24 Marriage contracts
- § 6:25 —Second and later marriages
- § 6:26 —First marriages
- § 6:27 —Caveat
- § 6:28 —Antenuptial and postnuptial contracts
- § 6:29 —Non-marriage arrangements
- § 6:30 Elective share: Augmented estate
- § 6:31 —Effective date
- § 6:32 —Effect

#### FLORIDA ELDER LAW

```
§ 6:33
        —Claim of surviving spouse
       —Exclusions from the marital elective claim
§ 6:34
§ 6:35
       —Elective share amount
§ 6:36
       —Sources from which elective share is payable
§ 6:37
       -Liability of direct recipients and beneficiaries
§ 6:38
       —Valuation of the property used to satisfy the elective
         share
       § 6:39
       — Fair market value
§ 6:40
       —Other interests
§ 6:41
       -Protection of payors and third parties
§ 6:42
§ 6:43
       —Exercise of right of election
       — —By whom
§ 6:44
       ———Court decision
§ 6:45
       — — When exercised
§ 6:46
       -- -Withdrawal
§ 6:47
§ 6:48
       —Order of contribution
       — —Personal representative's duties
§ 6:49
§ 6:50
       ——Surviving spouse's suit
§ 6:51
       —Dangers of elective share rights
       ——"Autumn" marriages
§ 6:52
§ 6:53
       ——"Paper" marriages
        --- Mentally ill spouse
§ 6:54
§ 6:55
       ——Learning disabled spouse
§ 6:56
       ——Surviving spouse as a prey
§ 6:57
        ——Short marriages
§ 6:58
       --- Children or others in need
§ 6:59
       — —Faulty prenuptial agreement
§ 6:60
       —Medicaid spouse
§ 6:61
       ——Informal agreement
§ 6:62
       — —Faulty divorce
§ 6:63
       —Avoiding the marital election
§ 6:64
       ——Prenuptial or postnuptial agreement
§ 6:65
       — Written consents
       — —Irrevocable trust
§ 6:66
§ 6:67
        ——Revocable trust
§ 6:68
       — —Consent required for revocation
§ 6:69
       — Revocation without the decedent
§ 6:70
       — Give up use and possession
§ 6:71
        — —Power of appointment
       ——Create a contingency
§ 6:72
§ 6:73
       — Give gifts more than one (1) year prior to death
§ 6:74
       — —Transfers not triggered by death
§ 6:75
       —Give gifts exempt under gift tax law
```

- § 6:76 —Elective share trust or gift to spouse
- § 6:77 ——Qualifying special needs trust
- § 6:78 —Homestead—Election by spouse
- § 6:79 Letter to client explaining estate plans
- § 6:80 Letter to client suggesting investment counsel

# D. FORMS

- § 6:81 A sample intake memo for estate planning
- § 6:82 Sample prenuptial agreement
- § 6:83 Sample postnuptial agreement
- § 6:84 Two ways to avoid probate proceedings

# E. CHECKLISTS

- § 6:85 Information needed to recommend an estate plan
- § 6:86 Palimony contract
- § 6:87 Letter to doctor asking for competency opinion
- § 6:88 Letter to doctor of client asking for aid

# CHAPTER 7. WILLS

#### A. PURPOSE AND TYPES OF WILLS

- § 7:1 Purpose of a will
- § 7:2 Two types of will

# **B. VALIDITY OF A WILL**

- § 7:3 Who may make a will—Capacity
- § 7:4 ——Maker's signature is required
- § 7:5 ——At least two witnesses required
- § 7:6 ———Who may witness
- § 7:7 Witnesses' affidavits
- § 7:8 ———Contents of the affidavits
- § 7:9 ———Obtaining the affidavit
- § 7:10 ——Self-proving will affidavit
- § 7:11 ——Notarization of affidavit
- § 7:12 Validity of a will made in another state

# C. AMENDING OR REVOKING A WILL

- § 7:13 Amendments
- § 7:14 Revocation

# D. SURVIVING SPOUSE'S SHARE OF THE INTESTATE ESTATE

§ 7:15 Spouse's share

- § 7:16 Shares of other heirs
- § 7:17 Share of the State of Florida

#### E. SURVIVING SPOUSE'S ELECTIVE SHARE

- § 7:18 Marital election
- § 7:19 Elective share applicable to non-probate assets

### F. HEIRS—SPECIAL PROVISIONS

- § 7:20 A will can specify heirs
- § 7:21 Killers
- § 7:22 Pretermitted spouses and children
- § 7:23 "Virtual" adopted children

# G. PERSONAL REPRESENTATIVES

- § 7:24 Personal representative's duties
- § 7:25 —Engaging an attorney to handle probate proceeding
- § 7:26 —Marshaling assets
- § 7:27 —Locating heirs
- § 7:28 —Bond
- § 7:29 —Approving papers and settlements
- § 7:30 —Providing information for reports and accountings
- § 7:31 —Paying creditor claims
- § 7:32 —Court order of contribution
- § 7:33 —Distributing the estate's assets to the heirs
- § 7:34 Who may serve as a personal representative
- § 7:35 —Floridians
- § 7:36 —When nonresidents may serve as personal representative
- § 7:37 —Attorneys as personal representatives
- § 7:38 —Corporate trustee
- § 7:39 Statutory preferences as to the appointment of a personal representative
- § 7:40 —Preferred personal representative for testate estates
- § 7:41 —Preferred personal representative for intestate estates
- § 7:42 When a guardian may select the personal representative
- § 7:43 When the court may select the personal representative
- § 7:44 Sample provision: Naming attorney as personal representative
- § 7:45 Who may not serve as personal representative

### H. FORMS

§ 7:46 Simple will

§ 7:47	Testamentary trust
§ 7:48	Sample form of codicil
§ 7:49	Petition to appoint commissioner
§ 7:50	Sworn statement of witnesses as to identity of signatures
§ 7:51	Order appointing commissioner
§ 7:52	Oath of witness
§ 7:53	Separate revocation document
§ 7:54	Consent to attorney acting as personal representative
§ 7:55	Acknowledgement Pursuant to Florida Statutes,
	section Fla Stat. 733.617(8)(a)

# **CHAPTER 8. PROBATE PROCEEDINGS**

# A. REASONS FOR AND METHODS OF PROBATE AVOIDANCE

§ 8:1	Clients' concerns and common misconceptions
§ 8:2	—Effect of making a will
§ 8:3	—Effect of the size of the estate
§ 8:4	—Cost and time of probate proceedings
§ 8:5	Probate avoidance: living trust and the "common
	property" route

# B. ADVANTAGES OF PROBATE PROCEEDINGS

- § 8:6 Oversight mechanisms to monitor personal representative
  § 8:7 Public statement of decedent's desires
  § 8:8 Assurance that the estate is distributed in a timely fashion
- C. DISADVANTAGES OF PROBATE PROCEEDINGS
- § 8:9 Obtaining proof of payment in a summary administration
- § 8:10 Costs
- § 8:11 Delayed distribution of assets

# D. PURPOSE OF PROBATE; WHEN REQUIRED; ASSETS SUBJECT TO PROBATE

§ 8:12 When probate is required
§ 8:13 —Property held as tenants in common
§ 8:14 —Choses in action
§ 8:15 —Assets held as common property

§ 8:16 —Life insurance proceeds § 8:17 Purpose of probate proceedings —Proofs—Testate estate § 8:18 § 8:19 Effect of intestacy § 8:20 —Proofs—Intestate estate INITIATING PROBATE PROCEEDINGS § 8:21 Heirs' initial contact with attorney § 8:22 Determining if there are probatable assets § 8:23 Intake memorandum § 8:24 Original will F. TYPES OF PROBATE PROCEEDINGS § 8:25 Effect of the size of the estate and the nature of the estate's assets § 8:26 No probate § 8:27 —Disposition without administration; asset caps § 8:28 —Petition § 8:29 ——Contents of the petition § 8:30 —Court order authorizing asset distributions § 8:31 Summary administration § 8:32 -Estates eligible for summary administration § 8:33 — —Proof of payment of creditors § 8:34 —Petition —Petitioners § 8:35 § 8:36 —Court order authorizing asset distributions § 8:37 —Notice to creditors § 8:38 —Attorney required; fees Formal administration § 8:39 § 8:40 —Commencement § 8:41 —Contents of petition § 8:42 —Service of petition --Objections § 8:43 § 8:44 —Undue influence objection § 8:45 -Initial orders § 8:46 —Procedure § 8:47 — —Notice to creditors § 8:48 ———Specific creditors entitled to notice — — Payment of creditor claims § 8:49 § 8:50 --- Notice of administration-Service of the notice of administration — Notice to creditors—Presentment to court § 8:51

§ 8:52 § 8:53 — —Inventory of assets

——Asset administration

§ 8:54	———Bank accounts
§ 8:55	———Securities
§ 8:56	———Transfer or sale of real estate
§ 8:57	— — Personal representative's accounts
§ 8:58	———Payment of bills
§ 8:59	———Taxes
§ 8:60	———Final distribution of assets to heirs and
	beneficiaries
§ 8:61	— — Preliminary and final accounting to the court
§ 8:62	—Discharge of the personal representative
§ 8:63	—Personal representative's bond
§ 8:64	—Personal representative's fees and commissions
§ 8:65	— — Multiple personal representatives
§ 8:66	— —Lawyer as personal representative
§ 8:67	—Lawyer's fees
§ 8:68	Homestead proceedings
§ 8:69	—Purpose
§ 8:70	——Separate marital homesteads
§ 8:71	—Procedure when homestead probate is permitted as a
	separate proceeding
§ 8:72	——Proofs
§ 8:73	——Order
§ 8:74	—Procedure when homestead is not permitted as a
0.055	separate proceeding
§ 8:75	——Procedure
§ 8:76	——Order
§ 8:77	Ancillary proceedings for non-residents with assets in Florida
§ 8:78	—Who may serve as personal representative
§ 8:79	— —Qualified foreign personal representative
§ 8:80	—Procedure
§ 8:81	Marital election proceedings
§ 8:82	Reformation and modification of wills
G. El	LECTRONIC FILING AND SERVICE

# G. ELECTRONIC FILING AND SERVICE

- § 8:83 Electronic filing
- § 8:84 E-Mail service

# H. FORMS

§ 8:85 Probate information sheet
 § 8:86 Sample memorandum to client explaining the nature of summary administration
 § 8:87 Memorandum to client explaining the nature of formal administration

§	8:88	Sample retainer agreement on formal administration probate proceedings
§	8:89	Petition and order for use in homestead proceedings
§	8:90	Petition to use copy in place of last original will for probate
§	8:91	Notice of hearing on petition to use copy
§	8:92	Affidavit of no Florida estate tax due
§	8:93	Petition for formal administration (Florida)
§	8:94	Notice of petition for formal administration
§	8:95	Order admitting will to probate and appointing personal representative (Florida)
§	8:96	Letters of administration (Florida)
§	8:97	Notice to creditors (Florida)
§	8:98	Notice to creditors
§	8:99	Release of claim by creditor
§	8:100	Estate inventory
§	8:101	Petition to sell real property (Florida)
§	8:102	Order authorizing sale of real property (Florida)
§	8:103	Preliminary account of personal representative(s) (Florida)
§	8:104	Final accounting of personal representative (Florida)
§	8:105	Petition for discharge of personal representative (Florida)
§	8:106	Order discharging personal representative (Florida)
§	8:107	Petition for personal representative fees (Florida)
§	8:108	Attorney's certification of death

# CHAPTER 9. TITLING ASSETS TO AVOID PROBATE

# A. INTRODUCTION

- § 9:1 Commonly held assets
- § 9:2 The four types of assets subject to joint ownership

# B. JOINT OWNERSHIP OF BANK ACCOUNTS

§ 9:3 Bank accounts
§ 9:4 —Totten trusts
§ 9:5 — Access to funds in a Totten trust
§ 9:6 — Disadvantage of Totten trust
§ 9:7 — Beneficiary has no obligation to share
§ 9:8 — Beneficiary's death may have unintended results
§ 9:9 —Joint accounts with right of survivorship

§ 9:10	——Access to funds during life
§ 9:11	——Access to funds after death
§ 9:12	——Disadvantages of joint accounts
§ 9:13	— — —Accessible to creditor claims
§ 9:14	———Right to or responsibility for alimony
§ 9:15	———Estate plan thwarted
§ 9:16	—Joint accounts under tenancy by the entirety
	provisions
§ 9:17	—Uniform Gifts to Minors Act
§ 9:18	——Disadvantages of a gift to minor
§ 9:19	———Access to funds at 21
§ 9:20	———Complications upon the death of custodian
§ 9:21	———Complications upon the death of the minor

# C. JOINT OWNERSHIP OF SECURITIES, LIFE INSURANCE AND RETIREMENT ACCOUNTS

§ 9:22 Securities
§ 9:23 —Disadvantages of joint ownership of securities
§ 9:24 — Capital gains taxes
§ 9:25 — Transactions require multiple signatures
§ 9:26 —Transfer on death accounts

Life insurance and retirement accounts

- D. TYPES OF DEEDS TO REALTY
- § 9:28 Types of warranties
- § 9:29 —Quit-claim deed
- § 9:30 —Bargain and sale deed
- § 9:31 —Statutory warranty deed

### E. JOINT OWNERSHIP OF REALTY

§ 9:32 Real estate

§ 9:27

- § 9:33 Joint tenancies
- § 9:34 —Disadvantages of joint tenancies with right of survivorship
- § 9:35 ——Capital gains taxes
- § 9:36 ——Homestead exemption may be diminished or lost
- § 9:37 ——Signatures of all co-owners required for transactions
- § 9:38 Tenancy by the entirety
- § 9:39 —Advantages of a tenancy by the entirety
- § 9:40 Tenancies in common
- § 9:41 Life estate deeds
- § 9:42 —Life estate deed to convey present title to heirs

§ 9:43	——Advantages of life estate deed to convey present
	title
§ 9:44	———Estate plan can be satisfied
§ 9:45	———Homestead exemption preserved
§ 9:46	———Capital gains taxes
§ 9:47	——Disadvantages of life estate deed to convey
	present title
§ 9:48	——————————————————————————————————————
§ 9:49	— — — Creditor's liens
§ 9:50	— — —Condo requirements
§ 9:51	— — — Transactions require multiple signatures
§ 9:52	———Grantor loses control
§ 9:53	"Lady Bird" life estate deeds—Life estate deed to
	convey future title to heirs
§ 9:54	——Advantages
§ 9:55	———Advantage of preserving eligibility for Medicaid
§ 9:56	———Life estate owner retains control
§ 9:57	———Homestead exemption preserved
§ 9:58	— — Protection from creditor claims
§ 9:59	— — — Title insurance
§ 9:60	———Condo requirements
§ 9:61	———Capital gains taxes
§ 9:62	———Eliminates trust ownership problems
, c.c <u>-</u>	Proceeding

# F. SURVIVING SPOUSE MARITAL ELECTION

§ 9:63 Generally

# CHAPTER 10. REVOCABLE TRUSTS

- § 10:1 Basics of Trusts
- § 10:2 Types of Trusts
- § 10:3 The "Living Trust"
- § 10:4 Governing Law

# A. NATURE OF A TRUST TO AVOID PROBATE

- § 10:5 Defining a living trust
- § 10:6 Characteristics of the living trust
- § 10:7 Two Primary Purposes of a living trust
- § 10:8 Defining a living trust—Living trusts distinguished from testamentary trusts
- § 10:9 Parties who create and administer a trust
- § 10:10 —Maker
- § 10:11 Parties who administer a trust—Trustees
- § 10:12 —Beneficiaries

§ 10:13	Revocability
§ 10:14	Irrevocable Trusts and tax treatment, briefly
§ 10:15	When the Revocable Trust becomes Irrevocable
§ 10:16	The Florida Trust Code (FTC)
§ 10:17	Key features of the Florida Trust Code
§ 10:18	Representation
§ 10:19	Court modification of a trust
§ 10:20	Nonjudicial modification of a trust
§ 10:21	Decanting of trusts
§ 10:22	Decanting of Trusts: The Three Scenarios
§ 10:23	Decanting of Trusts: Procedure
§ 10:24	Creditor claims
§ 10:25	Personal obligations of a trustee
§ 10:26	Spendthrift trusts
§ 10:27	Self-settled trusts and creditors
§ 10:28	Revocation of trusts: Revocation by Trust terms
§ 10:29	Revocation of trusts: Revocation by Will
§ 10:30	Revocation of trusts: Revocation by intent
§ 10:31	Revocation of trusts: Who can revoke
§ 10:32	Bonds for trustees
§ 10:33	Trustees duties
§ 10:34	Loyalty of the trustee
§ 10:35	Voidable trustee acts
§ 10:36	Informing beneficiaries
§ 10:37	Powers to direct trustees
§ 10:38	Exculpatory provisions

# B. REASONS FOR USING A LIVING TRUST

§ 10:39	Purpose of a living trust
§ 10:40	Advantages of a living trust
§ 10:41	—Settlor chooses the trustee
§ 10:42	— —Trustee's accountability
§ 10:43	— —Care monitors can direct trustee's administration
§ 10:44	——Advisory panel can dictate investment policy
§ 10:45	—Trustee's use of funds is restricted
§ 10:46	—Protection from creditors' claims
§ 10:47	—Trust arrangement as an alternative to guardianship
§ 10:48	—Probate avoidance
§ 10:49	<ul> <li>— Avoiding multiple probate proceedings concerning out-of-state realty</li> </ul>
§ 10:50	——Probate litigation is avoided
§ 10:51	—Protection from nursing home fees

§ 10:52	—Privacy
§ 10:53	—Marital claims
§ 10:54	—Estate tax planning
§ 10:55	—Income tax planning
§ 10:56	—Selected heirs
§ 10:57	Disadvantages to a living trust
§ 10:58	—Unreliable trustees
§ 10:59	—Legal expense of setting the trust up
§ 10:60	—Client's reluctance to fund the trust
§ 10:61	—Tax status of an irrevocable trust
§ 10:62	—No closure
§ 10:63	Alternatives to trusts and for which clients are living trusts appropriate
§ 10:64	Explaining Trusts and Wills to the client
, 10.01	Emplaining Tracts and Wills to the Orient
C. TF	RUSTEES
§ 10:65	Two types of trustees
§ 10.65	V 1
§ 10.66 § 10:67	
8 10.01	trusteeship
§ 10:68	
3 10.00	trusteeship
§ 10:69	
§ 10:70	-
§ 10:71	— —Advantages
§ 10:72	Selection of a trustee
§ 10:73	—Desirable qualities in a trustee
§ 10:74	— —Geographical location
§ 10:75	—Multiple trustees
§ 10:76	—Corporate trustees
§ 10:77	— —Criteria
§ 10:78	<ul> <li>—Advantages of using a trust company</li> </ul>
§ 10:79	
§ 10:80	———Good accounting and reporting systems
§ 10:81	
§ 10:82	— — Professionalism
§ 10:83	—Honesty
§ 10:84	— —Disadvantages of using a trust company
§ 10:85	
§ 10:86	
§ 10:87	
§ 10:88	
3	may be infrequent
8 10.89	—Attorneys as trustees

### § 10:90 Acceptance of Trustee

#### D. ADMINISTRATION

```
§ 10:91
          Stages
§ 10:92
          Initial administration
§ 10:93
          —Overseeing proper execution of the trust
           agreement
§ 10:94
          —Funding
§ 10:95
          ——Instructions on funding
          — —List of assets
§ 10:96
§ 10:97
          — — Trustees' use of the list of assets
§ 10:98
          ——Assets to be placed in the trust's name
          -- —Automobile
§ 10:99
§ 10:100
          ———Personal property
§ 10:101
          — Securities
§ 10:102
          ———Ease of transaction
§ 10:103
          ———Dealings with the issuer or transfer agents
§ 10:104
          ———Mailing
          --Charges
§ 10:105
§ 10:106
          ———Safety
          ———Reports
§ 10:107
§ 10:108
          ———Early calls on bonds
§ 10:109
          --Dividends
          — — Only one trustee's signature should be
§ 10:110
           required
§ 10:111
          — — —Insurance
          ——IRA accounts
§ 10:112
§ 10:113
          — —Life insurance
§ 10:114
          -Separate assets and accounts held as common
           property
§ 10:115
          -Real estate
          Lifetime administration
§ 10:116
§ 10:117
          —Income taxes
          —Accountings from the trustee to the settlor
§ 10:118
§ 10:119
          —Account statements from banks and brokers to the
           settlor
§ 10:120
          —Altering the trust agreement
§ 10:121
          — —Amendments to the trust agreement
§ 10:122
          ——Amendments to an irrevocable trust
§ 10:123
          — Attorney's role in preparing amendments
§ 10:124
          —Standard for the trustee's investments
§ 10:125
          — —The prudent investor rules
          —Allocation of income and principal
§ 10:126
§ 10:127
          —Adjustments to allocations
```

```
—Record keeping and reports
§ 10:128
          —Delegation of investment functions
§ 10:129
§ 10:130
          Post-mortem administration
§ 10:131
          —Marshaling assets
§ 10:132
          ——Assets outside of the trust
§ 10:133
          ———Solely-owned assets
§ 10:134
          ———Common property assets
§ 10:135
          —Estate taxes
          — —Tax filings
§ 10:136
§ 10:137
          — — Tax payments
§ 10:138
          —Paying creditors
          — For a settlor dying prior to notice to creditors—
§ 10:139
           Effect of probate
          ——Search for settlor's creditors post-mortem—
§ 10:140
           Search for specific creditors
§ 10:141
          — —When claims are barred
§ 10:142
          —Filing a notice of trust
§ 10:143
          —Contents of the notice of trust
§ 10:144
          -Procedure if probate proceedings have commenced
§ 10:145
          —Paying creditors—Liability for failure to file a
           notice of trust
§ 10:146
          — —Resolution of creditor claims
§ 10:147
          ——Payments from the trust
§ 10:148
          --- When claims are barred
          — Limits on the trustee's liability for payment of
§ 10:149
          — —Attorney's role in providing notice to creditors
§ 10:150
§ 10:151
          —Income and intangible taxes
§ 10:152
          ——Taxes up to date of death
§ 10:153
          — — Taxes post-mortem
§ 10:154
          -Notification to account holders to use EIN
§ 10:155
          -Payment of fees
§ 10:156
          —Distribution of the trust assets
          — —Furnishing beneficiaries with copies of the trust
§ 10:157
           agreement
          ——Accounting to beneficiaries
§ 10:158
          ———Total accounting
§ 10:159
          — — —Tax returns
§ 10:160
§ 10:161

    — Distributions in cash or in-kind

          —Trustee's liability on claims for marital election
§ 10:162
§ 10:163
          —Rule against perpetuities
          —Attorney's duties in aiding the trustee's
§ 10:164
           administration
§ 10:165
          — —Resolving creditors' claims
          ——Accounting and distribution
§ 10:166
```

§ 10:167 —Attorney's fees
§ 10:168 — Additional fees
§ 10:169 —Court interpretations
§ 10:170 —Venue
§ 10:171 —Employment and compensation questions
§ 10:172 Resignation of trustee
§ 10:173 Limitation on proceedings against trustees

# E. ADDITIONAL DOCUMENTS: POUR-OVER WILL AND POWER OF ATTORNEY

- § 10:174 Additional documents
- § 10:175 —Pour-over will—Purpose
- § 10:176 ——Provisions
- § 10:177 ——Automobile or motor home
- § 10:178 ——Personalty
- § 10:179 ——Standard provisions
- § 10:180 ——Real estate
- § 10:181 —Power of attorney
- § 10:182 ——Power to fund the trust
- § 10:183 ——Taxes
- § 10:184 ——Contracts
- § 10:185 —Other matters—Safe deposit boxes
- § 10:186 Beneficiary's power of attorney

#### F. FORMS

- § 10:187 Form of Single Revocable Living Trust
- § 10:188 Form of Joint Revocable Living Trust
- § 10:189 Form of living trust restatement
- § 10:190 Instruction form
- § 10:191 Asset list
- § 10:192 Form of amendment to living trust
- § 10:193 Sample pour-over will
- § 10:194 Memorandum of trust and durable power of attorney
- § 10:195 Sample letter to trust beneficiary/interim accounting
- § 10:196 Interim accounting
- § 10:197 Sample letter to beneficiaries for final accounting
- § 10:198 Sample form of final accounting
- § 10:199 Form of elective share trust
- § 10:200 Contract with trust advisory panel
- § 10:201 Provision in trust agreement requiring trustees' duties regarding trust advisory panel
- § 10:202 Guidelines for trustees

§ 10:203	Letter to trustee for signature and return of trust agreement
§ 10:204	Deed to trust
§ 10:205	Contract with advisory panel for investment expertise
§ 10:206	Contract with trust protector for special needs trust administration
§ 10:207	Trust provision requiring trustee to seek trust protector's guidance
§ 10:208	Settlor Acknowledgement Pursuant to 736.0708

# CHAPTER 11. SPECIAL NEEDS PLANNING FOR PEOPLE WITH DISABILITIES

# A. PLANNING ISSUES AND OPTIONS

§ 11:1	Providing for disabled heirs
§ 11:1 § 11:2	—Evaluation of heir's health insurance and financial needs and client's financial position and goals
§ 11:3	Evaluation of heir's needs and client's financial position—Funding with life insurance proceeds or pooling funds
§ 11:4	Considerations when planning
§ 11:5	—Protecting ill spouse
§ 11:6	——Qualifying special needs trust
§ 11:7	—Preservation of governmental assistance benefits
§ 11:8	— — Nonfinancial social service assistance
§ 11:9	—Asset management
§ 11:10	—Support mechanisms
§ 11:11	—Lifetime aid
§ 11:12	Choices available to the client
§ 11:13	—Disinherit disabled heir
§ 11:14	—Outright bequest to the heir
§ 11:15	—Bequest to another with instructions to provide for the needy heir
§ 11:16	—Special needs trust
§ 11:17	——Special needs provisions
§ 11:18	——Appointing a trustee
§ 11:19	——Administration of the trust
§ 11:20	——Structure of the trust
§ 11:21	Court creation of special needs trust
§ 11:22	Funding of special needs trust
§ 11:23	"Pooled" trust
§ 11:24	Decanting special needs trusts

# B. FORMS

§ 11:25 Sample revocable special needs trust form (providing

	for lifetime of settlor with residuary trust for the
	disabled heir)
§ 11:26	Sample irrevocable special needs trust for disabled heir alone
§ 11:27	Instructions for trustees of supplemental needs trusts
§ 11:28	Petition for creation of special needs trust in guardianship proceedings
§ 11:29	Petition for creation of special needs trust in trial court
§ 11:30	Petition for creation of special needs trust in probate court
§ 11:31	Sample friends and family letter form
§ 11:32	Sample third party irrevocable special needs trust funding instructions
§ 11:33	"Springing" special needs language

# CHAPTER 12. THE FEDERALLY TAXABLE ESTATE AND STATE TAX CONSIDERATIONS

# A. OVERVIEW OF TRANSFER TAX LAWS

	_		 1.0	 
8 12.1	1	Purnose		

- § 12:2 Four types of transfer taxes
- § 12:3 —Applicable to inter vivos and post-mortem transfers
- § 12:4 —Gratuitous transfer required
- § 12:5 Capital gains taxes on homesteads
- § 12:6 Inheritance taxes

### **B. ESTATE TAXES**

- § 12:7 When applicable; who is liable
- § 12:8 Florida's estate tax
- § 12:9 —State death tax credit
- § 12:10 Defining the gross estate
- § 12:11 —Inclusions in the gross estate
- § 12:12 —Exclusions from the gross estate
- § 12:13 ——Discretionary payments
- § 12:14 ——Life estates
- § 12:15 —Deductions from the gross estate
- § 12:16 ——Expenses, indebtedness and taxes
- $\S 12:17$  ——Losses
- § 12:18 ——Unlimited charitable deduction
- § 12:19 ——Unlimited marital deduction
- § 12:20 ———Terminable interests

### C. GIFT TAXES

§ 12:21 Overview

§ 12:22	Who is liable for gift tax
§ 12:23	What constitutes a gift
§ 12:24	—Personal services are excluded from gift tax
§ 12:25	—Effect of a disclaimer
§ 12:26	—Incomplete gifts
§ 12:27	—Exchanges for consideration
§ 12:28	—Involuntary transfers
§ 12:29	Annual exclusion
§ 12:30	—Lifetime exclusion
§ 12:31	—Future interests
§ 12:32	—Married couples
§ 12:33	Unlimited marital and charitable deductions
§ 12:34	Unlimited gifts for medical or educational expense
§ 12:35	—Exclusion limited to unreimbursed tuition and
	medical expenses
§ 12:36	—Payments made to fulfill a legal obligation; support
	payments

# D. GENERATION-SKIPPING TRANSFER TAX (GST TAX)

§ 12:37	Purpose
§ 12:38	Definitions
§ 12:39	—Skip person
§ 12:40	— — Non-linear beneficiaries
§ 12:41	—Transferor
§ 12:42	When a GST occurs
§ 12:43	—Taxable distribution
§ 12:44	—Taxable termination
§ 12:45	—Direct skips
§ 12:46	Exceptions to GST tax
§ 12:47	—Medical or educational expenses
§ 12:48	—Transfers of property which was subject to prior tax within the same generation which does not have the effect of avoiding GST tax
§ 12:49	Exemption
§ 12:50	Tax rate
§ 12:51	Who is liable for the tax
§ 12:52	—Skip person is liable for tax on distributions
§ 12:53	—The trust is liable for taxable terminations
§ 12:54	—Transferor is liable on direct skips

# E. VALUATION OF TAXABLE TRANSFERS AND TRUST ASSETS

§ 12:55 Fair market value

§ 12:56	—Valued as of date of transfer
§ 12:57	——When valued for gift tax
§ 12:58	——When valued for estate tax
§ 12:59	— — —Alternate valuation date
§ 12:60	— — —Inter vivos transfers
§ 12:61	Valuation formulas
§ 12:62	—Amount of the trust principal
§ 12:63	—Value of improvements
§ 12:64	—Actuarial valuation of annuities, etc
§ 12:65	—Accrued income on a transferred asset
§ 12:66	—Market price of real property
§ 12:67	1 1 0
	with a closely held business
§ 12:68	•
§ 12:69	
	——Publicly traded securities
§ 12:71	——Closely held securities
F T	AX COMPUTATION
§ 12:72	
§ 12:73	
§ 12:74	
§ 12:75	
§ 12:76	Gift taxes
§ 12:77	Capital gains taxes
§ 12:78	—Capital gains tax computations
§ 12:79	Gift tax computation
§ 12:80	Estate tax computation
§ 12:81	Generation-skipping transfer tax computation
§ 12:82	—Inclusion ratio

# G. ESTATE TAX AVOIDANCE

§ 12:83	Reducing the size of the estate
§ 12:84	—Gifts
§ 12:85	——Annual and lifetime exemptions
§ 12:86	——Considerations when instituting a gift program
§ 12:87	— — Small estate
§ 12:88	— — —Donor's life expectancy
§ 12:89	— — Donor's need for income
§ 12:90	— — Donees' trustworthiness; creditors
§ 12:91	— — — Capital gains taxes
§ 12:92	Reduce value of estate assets
§ 12:93	—A-B trusts (credit shelter trusts)

```
——If spouse gets all
§ 12:94
§ 12:95
          ——Small estates
§ 12:96
          — —Trust income
§ 12:97
          — — Trust principal
§ 12:98
          — —Power of appointment
          — —Terminable interest
§ 12:99
§ 12:100
          ———Terminable interest with power of
           appointment
§ 12:101
          — Forms of A-B trust
          —Qualified terminable interest property trust (QTIP
§ 12:102
           trust)
§ 12:103
          — Comparing a QTIP trust to an A-B trust
          ———Terminable interest that qualifies for the
§ 12:104
           marital deduction
§ 12:105
          ———Limited power of appointment granted to
           spouse
          — — —Spouse receives income
§ 12:106
          — — Principal distributions are restricted
§ 12:107
§ 12:108
          ———Tax deferral benefits
          — —QTIP election
§ 12:109
§ 12:110
          ——Advantages of a QTIP trust
          — — Disadvantages of QTIP trusts
§ 12:111
          — Other considerations in making the QTIP
§ 12:112
           election
§ 12:113
          ———Tax liability of surviving spouse
          -QTIP trust may be in the form of a
§ 12:114
           testamentary or living trust
§ 12:115
          — Combined QTIP and credit shelter trust
§ 12:116
          —Crummey trust
§ 12:117
          ——Purpose
          ——How to use a Crummey trust to qualify for the
§ 12:118
           gift tax exclusion
          — — —Irrevocable trust
§ 12:119
          ---Independent\ trustee
§ 12:120
          — — Beneficiaries
§ 12:121
§ 12:122
          ———Beneficiary's rights
§ 12:123
          ———Assets in the trust
§ 12:124
          — —Beneficiary's gift tax peril
§ 12:125
          —Life insurance trust
§ 12:126
          ——Purposes
§ 12:127
          ——Setting up the trust
          — — Funding the trust with second-to-die
§ 12:128
           insurance
          ——Settlor must relinquish all incidents of
§ 12:129
           ownership
```

```
— —Independent trustee
§ 12:130
§ 12:131
         — Using insurance proceeds to pay estate tax
§ 12:132
         — Pitfalls
§ 12:133
         ———Document the Crummey powers
§ 12:134
         -- -Withdrawals
         ———Getting insurance
§ 12:135
§ 12:136
         —Charitable remainder trust (CRT)
§ 12:137
         — Advantages
         ———Capital gains tax
§ 12:138
§ 12:139
         ———Income taxes
         --Estate taxes
§ 12:140
§ 12:141
         — — — Diversification
         — — Publicity
§ 12:142
§ 12:143
         —Life insurance
§ 12:144
         --Disadvantages
         --Ceding control
§ 12:145
         ———Heirs lose the donated assets
§ 12:146
§ 12:147
         — Expected decreases in charitable giving
         — Types of CRTs
§ 12:148
         ———Charitable remainder annuity trust (CRAT)
§ 12:149
§ 12:150
         ———Charitable remainder unitrust (CRUT)
§ 12:151
         — Criteria for setting up a valid CRT
§ 12:152
         -- -Irrevocable trust
§ 12:153
         ———Payout rates
§ 12:154
         — — —Income period
         — — Income beneficiary
§ 12:155
         --Trustee
§ 12:156
§ 12:157
         — — — Ultimate distribution
         --- Costs of preparing the trust agreement
§ 12:158
§ 12:159
         — Tax considerations
         --Charitable deduction
§ 12:160
§ 12:161
         ———Planning considerations
§ 12:162
         —— — Using a CRT to shelter an IRA
§ 12:163
         GRITs, GRATs, GRUTs, PRITs and QPRITs
§ 12:164
         —Purpose: Estate freeze
§ 12:165
         —IRC Chapter 14, Section 2702
§ 12:166
         — — Definitions
         ———Applicable family member
§ 12:167
§ 12:168
         ———Grantor's family members
§ 12:169
         ———Interest in trust
         ———Qualified interest
§ 12:170
§ 12:171
         —GRIT
§ 12:172
         —GRAT
§ 12:173
         —GRUT
```

§ 12:174 --- Valuation § 12:175 ——Appreciation § 12:176 -Estate tax considerations for GRATs and GRUTs if grantor dies within trust term § 12:177 ——GRIT consequences --- GRAT and GRUT consequences § 12:178 —Other considerations for use of GRITs, GRATs, § 12:179 **GRUTs** § 12:180 ——Payout rate § 12:181 ——Appreciation § 12:182 — — High income —Personal residence trusts § 12:183 § 12:184 — —Advantages § 12:185 ——Definition of personal residence § 12:186 — Types of personal residence trusts § 12:187 ——Personal residence trust (PRT) § 12:188 ———Single residence as the trust's only asset § 12:189 ———Effect of sale or other transfer ———Replacement residence § 12:190 § 12:191 ——Qualified personal residence trust (QPRT) ———Personal residence as the trust asset § 12:192 § 12:193 ———Other trust assets § 12:194 ———Distributions of income and principal ———Payoff § 12:195 --Conversion § 12:196 § 12:197 ——Comparison of PRT to QPRT

### H. TO TAX PLAN OR NOT

§ 12:198 Estate tax planning in view of changing tax law

# I. APPENDIX

§ 12:199 Table of estate tax credit

### J. FORMS

§ 12:200	Provision for distribution of trust
§ 12:201	QTIP trust provisions
§ 12:202	Form of Crummey trust
§ 12:203	Life insurance trust form for benefit of a spouse and children
§ 12:204	Sample form for charitable remainder annuity trusts (CRATs)
§ 12:205	Sample form for charitable remainder unitrusts

# CHAPTER 13. FUNDING RETIREMENT WITH INVESTMENTS AND REAL ESTATE

### A. INVESTMENTS AND ANNUITIES

- § 13:1 Investments
- § 13:2 —Common investment strategy
- § 13:3 Annuities
- § 13:4 —Deferred annuity
- § 13:5 —Immediate annuity
- § 13:6 —Taxes
- § 13:7 —Disadvantages of annuities

# B. USING REAL ESTATE TO GENERATE RETIREMENT FUNDS

- § 13:8 Reverse Mortgage and Federally Backed Reverse Mortgages (HECM)
- § 13:9 Reverse mortgages—Purpose
- § 13:10 —Common threads
- § 13:11 ——When due
- § 13:12 ——Limited liability
- § 13:13 ——Loan based on equity
- § 13:14 ——Rising debt
- § 13:15 ——Lump sum loan advance
- § 13:16 —Choice of cash benefits
- § 13:17 ——Credit line
- § 13:18 ——Tenure monthly advances
- § 13:19 ——Term monthly advances
- 13:20 Lump sum
- § 13:21 —Costs
- § 13:22 ——Annuity
- § 13:23 ——Total annual loan cost (TALC) rate
- § 13:24 —Rules of thumb
- § 13:25 ——Family homestead
- § 13:26 ——Existing mortgages
- § 13:27 ——Short residency expected
- § 13:28 ——Gambling
- § 13:29 ——Credit line remainder
- § 13:30 ——Sale or mortgage
- § 13:31 ——Monthly advances
- § 13:32 ——Lump sum
- § 13:33 ——Reinvesting proceeds
- § 13:34 ——Fixed term
- § 13:35 —Effects on government benefits

§ 13:36 — —Loan amount not income § 13:37 ——Immediate annuity § 13:38 ——Deferred annuity § 13:39 —Hidden problems § 13:40 Viatical settlements § 13:41 Sale-lease back § 13:42 -How it works § 13:43 ——Benefits to retiree ——Benefits to buyer § 13:44 § 13:45 -Finding an investor § 13:46 —Provisions § 13:47 — Loan term —Tax implications for retiree § 13:48 § 13:49 —Real estate taxes -Medicaid § 13:50 § 13:51 Real estate sales/leases

# C. JOBS AND "SIDELINES"

§ 13:52 Preplanning

# CHAPTER 14. SOCIAL SECURITY AND PRIVATE PENSIONS

### A. THE SOCIAL SECURITY SYSTEM

§ 14:1 Overview of the Social Security system § 14:2 —Funding through FICA § 14:3 ——Regressive tax § 14:4 — Other funding issues Who is eligible for benefits § 14:5 § 14:6 -Workers who are not covered -Retirement age § 14:7 § 14:8 -Work required for full coverage-40 quarters of coverage (QCs) --- Reduced benefits if less than 40 QCs § 14:9 § 14:10 — Exception for nonprofit organization workers § 14:11 — — Military service -Spouses § 14:12 § 14:13 — — Definition --- Effect of divorce § 14:14 § 14:15 -Widows and widowers § 14:16 ——Death benefit -Children § 14:17 § 14:18 —Parents

§ 14:19	Benefit computation
§ 14:20	—Average monthly earnings (AIME) determination
§ 14:21	—Primary insurance amount (PIA) determination
§ 14:22	—Increased benefits if retirement delayed
§ 14:23	—Cost of living increases
§ 14:24	Benefit limits
§ 14:25	—Family maximum
§ 14:26	—Multiple benefits
§ 14:27	—Early retirement will decrease benefits
§ 14:28	-Excess earnings reduce benefits for persons under
	normal retirement age
§ 14:29	——Rate of reduction of benefits
§ 14:30	——Earnings computation
§ 14:31	—Complete loss of benefits
§ 14:32	Application for benefits
§ 14:33	Benefit payments
§ 14:34	Taxation
§ 14:35	Administrative and court reviews
§ 14:36	—Attorney's fees
	•

# **B. RAILROAD RETIREMENT PENSIONS**

§ 14:37	Railroad retirement pensions
§ 14:38	—Types of benefits available
§ 14:39	—Benefit amounts
§ 14:40	—Spouse's benefit amount
§ 14:41	—Survivor's amounts
§ 14:42	—Taxation of benefits
§ 14:43	Eligibility
§ 14:44	—Employees who are eligible for Tier I and Tier II benefits
§ 14:45	—Employees eligible for disability pension
§ 14:46	—Employees eligible for the supplemental pension
§ 14:47	
§ 14:48	—Children
§ 14:49	—Post-mortem benefits
§ 14:50	——Surviving spouse
§ 14:51	— —Children
§ 14:52	——Parents
§ 14:53	——Eligibility for a lump sum

# C. FEDERAL CIVIL SERVICE RETIREMENT PROGRAMS

§ 14:54 Federal civil service retirement programs

-Employment before January 1, 1984 § 14:55 § 14:56 —Employment after December 31, 1983 § 14:57 Civil service plan benefits § 14:58 —Immediate retirement benefits § 14:59 —Deferred benefits § 14:60 —Disability benefits § 14:61 —Surviving spouse's eligibility § 14:62 —Former spouses' eligibility -Benefit amount-Employee § 14:63 § 14:64 — —Сар ---Survivors § 14:65 —Cost of living increases (COLA) § 14:66 —Lump sum benefits § 14:67 § 14:68 —Benefit reductions § 14:69 Federal Employee Retirement System (FERS) plan § 14:70 —Eligibility § 14:71 —Contributions and deductions § 14:72 —Benefits ——Surviving spouse § 14:73 § 14:74 — — Disability § 14:75 — —Health insurance

# D. PRIVATE EMPLOYMENT RETIREMENT AND PENSION PLANS

§ 14:76 Employee Retirement Income Security Act (ERISA) § 14:77 -Not covered by ERISA § 14:78 —Two types of ERISA plans § 14:79 —Defined benefit plans security benefits § 14:80 —Defined benefit plans employer liability § 14:81 —DBP investment protection § 14:82 —Defined Contribution Plans (DCPs) security —DCP employee prudence § 14:83 —DCP liabilities § 14:84 § 14:85 —Qualified plans — —Time of distribution § 14:86 § 14:87 ———Vesting; normal retirement age § 14:88 ———Early retirement — — —Termination § 14:89 § 14:90 — — Required distribution --Death benefits § 14:91 § 14:92 — —Form of distribution -Income taxes § 14:93 § 14:94 —Excise taxes § 14:95 —IRA rollover

§ 14:96 § 14:97	—Qualified domestic relations order (QDRO) Failure of pension company
E. INI	DIVIDUAL RETIREMENT ACCOUNTS
\$ 14:98 \$ 14:99 \$ 14:100 \$ 14:101 \$ 14:102	Compensation and contributions to DBP or DCP Individual retirement accounts  —The SECURE Act  —Amount of contribution  —Earnings
§ 14:103 § 14:104 § 14:105	<ul> <li>—Kinds of IRAs</li> <li>—Traditional IRAs</li> <li>—Individual retirement account—Trustee or custodian</li> </ul>
\$ 14:106 \$ 14:107 \$ 14:108 \$ 14:109 \$ 14:110 \$ 14:111 \$ 14:112 \$ 14:113 \$ 14:114 \$ 14:115 \$ 14:116 \$ 14:117 \$ 14:118 \$ 14:119 \$ 14:120	<ul> <li>— Individual retirement annuity</li> <li>— Simplified Employee Pension (SEP)</li> <li>— Qualified employees</li> <li>— Employer contributions</li> <li>— Amount of employer's contribution</li> <li>— Tax treatment</li> <li>— SEP forms</li> <li>— Prohibited transactions</li> <li>— Inherited IRAs</li> <li>— Required distributions</li> <li>— Computation of required distribution</li> <li>— Beneficiaries</li> <li>— Inheritance beneficiaries</li> <li>Income and estate tax planning</li> <li>— Tax implications of naming a spouse as</li> </ul>
\$ 14:121 \$ 14:122 \$ 14:123 \$ 14:124 \$ 14:125 \$ 14:126 \$ 14:127 \$ 14:128	beneficiary  —Children or others as beneficiaries  —QTIP trusts as beneficiary  —Credit shelter trusts as beneficiary  —Charity as beneficiary  —Charitable remainder trust as beneficiaries  Gifts using retirement funds  Effect of the generation skipping tax  Marital election rights

# CHAPTER 15. VETERANS' BENEFITS

Types of veteran's benefits § 15:1 § 15:2 —Information § 15:3 —Eligibility § 15:4 ——Active service in the armed forces ———Wartime service § 15:5

§ 15:6	— — Discharge classification
§ 15:7	——Service-related disability/exacerbation of pre-
Ü	existing injury due to service related causes
§ 15:8	——Prisoners of war
§ 15:9	———Disability or death was not due to willful
Ü	misconduct or "vicious habits"
§ 15:10	— — Ratable disability
§ 15:11	—Disability benefits
§ 15:12	— —Taxes
§ 15:13	——Compensation rates
§ 15:14	— —Additional payment
§ 15:15	——Special disability compensation eligibility
§ 15:16	— No retirement pay
§ 15:17	——Dependents
§ 15:18	— Other disability benefits
§ 15:19	— — Specially adapted homes
§ 15:20	— — —Automobiles
§ 15:21	— — — Clothing
§ 15:22	—Pension
§ 15:23	— —Eligibility
§ 15:24	— Net Worth and Income for Veterans Affairs
	Purposes (IVAP)
§ 15:25	——Maximum annual rates effective December 1,
0.45.00	2017
§ 15:26	——Reduction while in nursing home or domiciliary
§ 15:27	——Protected programs
§ 15:28	—Survivor benefits
§ 15:29	——Service-connected disability death
§ 15:30	——Death due to nonservice connected cause
§ 15:31	——Spouse
§ 15:32	——DIC payments rates (2017)
§ 15:33	——DIC for parents of military service members
	who died in the line of duty or veterans whose death resulted from a service-related injury or
	disease
§ 15:34	——DIC for children
§ 15:35	— —Aid and attendance
§ 15:36	——Pension
§ 15:37	—Burial benefits
§ 15:38	—Eligibility
§ 15.36 § 15:39	— — Burial Allowance
-	— Health care benefits
§ 15:40	
§ 15:41	— —Mandatory
§ 15:42	——Discretionary
§ 15:43	——Priorities in health care

```
§ 15:44
          ———Income counted
§ 15:45
          ——Nursing home coverage
§ 15:46
          — — Eligibility
§ 15:47
          — — —Income eligibility
§ 15:48
          — — — Term
          ——Domiciliary care
§ 15:49
§ 15:50
          — Outpatient treatment
§ 15:51
          — — Eligibility
          — — Female
§ 15:52
§ 15:53
          ———Pharmacy services
§ 15:54
          ———Dental treatment
§ 15:55
          — — Persian Gulf Syndrome, agent orange and
          ionizing radiation
§ 15:56
          ———"Beneficiary" travel
§ 15:57
          ———Counseling programs
          — — Prosthetic devices
§ 15:58
§ 15:59
          — — —Blind aids and services
§ 15:60
          — — — Readjustment counseling
§ 15:61
          — The Veteran Directed Care program (VDC)
§ 15:62
          —State veterans benefits—Real estate tax
           reductions
§ 15:63
          —Protective legislation
          — —Powers of attorney
§ 15:64
          — —Lawsuits
§ 15:65
§ 15:66
          — —Guardianship
§ 15:67
          —Legacy Appellate procedure for VA decision dated
          before February 19, 2019
§ 15:68
          —Appellate procedure—Chain of appeal
§ 15:69
          ———Local VA office
          ———Board of Veterans' Appeals (BVA)
§ 15:70
§ 15:71
          ———Court of Veterans' Appeals
§ 15:72
          ———U.S. Court of Appeals for the Federal Circuit
§ 15:73
          — — — U.S. Supreme Court
§ 15:74
          ——Basis of appeal
§ 15:75
          ———Total or "partial appeal"
          — — — Medical care decisions
§ 15:76
§ 15:77
          — —Timing of appeal
§ 15:78
          ———Notice of Disagreement (NOD)
§ 15:79
          ———Where to file the NOD
          --- Working with the regional
§ 15:80
§ 15:81
          ——Statement of the Case (SOC)
§ 15:82
          ——Substantive appeal
§ 15:83
          ———Requesting a hearing
§ 15:84
          ———What to include in an appeal
§ 15:85
          ——Supplemental Statement of the Case (SSOC)
```

§ 15:86	— —Extensions
§ 15:87	——Newly discovered evidence
§ 15:88	——Docket call
§ 15:89	— — Time of completion
§ 15:90	———Expedited docket call
§ 15:91	——Personal hearings
§ 15:92	———Local office hearing
§ 15:93	— — BVA hearing
§ 15:94	——90-day rule
§ 15:95	———Request a hearing
§ 15:96	— — Submit evidence
§ 15:97	———Designate or change representative
§ 15:98	———File for extension
§ 15:99	——Staff attorneys v. board members
§ 15:100	——Decision of the BVA
§ 15:101	— — — Appealable order
§ 15:102	———Remands
§ 15:103	———Supplemental statement of the case
§ 15:104	——Ways to avoid remand
§ 15:105	———New issues
§ 15:106	— — New evidence
§ 15:107	——Appealing the BVA decision
§ 15:108	— — — Motion to reconsider
§ 15:109	———Re-opening of case
§ 15:110	———Time to appeal
§ 15:111	— — Notice of appeal
§ 15:112	——If you disagree with VA decision dated on or
	after February 19, 2019 now referred to as the
	decision review process
§ 15:113	——U.S. Court of Appeals for Veterans Claims
§ 15:114	——Missed Deadline to File
§ 15:115	—Appellate procedure- an existing legacy claim or appeal

# CHAPTER 16. SUPPLEMENTAL SECURITY INCOME AND SOCIAL SECURITY DISABILITY INSURANCE

# A. SUPPLEMENTAL SECURITY INCOME

§ 16:1 Supplemental Security Income (SSI)
§ 16:2 —Administration of SSI program
§ 16:3 —Eligibility for SSI
§ 16:4 —Age 65 or older

## TABLE OF CONTENTS

§ 16:5	— —Blind
§ 16:6	— —Disabled
§ 16:7	— — —Addicts
§ 16:8	—Eligibility of aliens
§ 16:9	——Qualified aliens
§ 16:10	——Sponsor's income
§ 16:11	— — Medicaid
§ 16:12	——Absences from U.S
§ 16:13	—What constitutes income
§ 16:14	—Earned income
§ 16:15	——Exclusions from earned income
§ 16:16	— — —Income earned by blind and disabled children attending school
§ 16:17	— — — Work expenses incurred in connection with a disability
§ 16:18	——Work expenses incurred by a blind person
	under an SSA plan to achieve self-support (PASS)
§ 16:19	—Unearned income
§ 16:20	——Exclusions from unearned income
§ 16:21	—General exclusions from earned and unearned
	income
§ 16:22	——Loan proceeds
§ 16:23	—In-kind support and maintenance (ISM)
§ 16:24	——Definition of ISM shelter expenses
§ 16:25	—In-kind payments—Shelter—Live-in benefits trigger the one-third reduction rule
§ 16:26	———Exclusions from one-third reduction rule
§ 16:27	———Entering a convalescent or nursing home
	reduces benefits
§ 16:28	—"Deemed" income
§ 16:29	— Effect of spouse's or parent's income
§ 16:30	—Resources
§ 16:31	— —What constitutes a resource
§ 16:32	— — —Income conversion
§ 16:33	———Cash accounts
§ 16:34	— — —Litigation awards
§ 16:35	—Excluded resources—Special needs trust
§ 16:36	—Special needs trust—Excluded resources
§ 16:37	—Amount of benefits
§ 16:38	—Qualification despite excess resources
§ 16:39	—Transfer of resources prior to eligibility
§ 16:40	—Special needs trust
§ 16:41	—Same-sex marriages
	-

# B. SOCIAL SECURITY DISABILITY INSURANCE (SSDI)

- § 16:42 Social Security Disability Insurance (SSDI) § 16:43 —Eligibility § 16:44 — — Under age 66 § 16:45 ——Insured status under Social Security Act § 16:46 — — Disability § 16:47 ———Five month statutory waiting period ———Five step sequential evaluation process § 16:48 § 16:49 — — — Availability of other work ———Step 3—The listing of impairments and proof § 16:50 § 16:51 ——Arduous 35 year labor
- § 16:52 ——Blindness
- § 16:53 —Termination of benefits
- § 16:54 ——Age 66 or death
- § 16:55 ——Disability ends
- § 16:56 ——Appealing a termination
- § 16:57 —Benefit amount
- § 16:58 —Medicare

### C. APPLICATION FOR BENEFITS

- § 16:59 Application process for SSI and SSDI
- § 16:60 —Information presented
- § 16:61 ——Proof of age
- § 16:62 ——Impairment information
- § 16:63 ———Detailed medical reports
- § 16:64 ——Detailed lab findings and co-workers' reports
- § 16:65 —Citizenship status information
- § 16:66 ——Financial information for SSI or for SSI/SSDI Concurrent Claims

# D. APPEALING THE DENIAL OR SUSPENSION OF BENEFITS

- § 16:67 Appeals process
- § 16:68 —Phase one—Reconsideration
- § 16:69 —Phase two—Hearing
- § 16:70 —Phase three—Appeals Council review
- § 16:71 —Phase four—Judicial review
- § 16:72 ———Expedited court review for constitutional questions
- § 16:73 —Matters not subject to appeal
- § 16:74 —Attorney fees

§ 16:75 ——Fees held in trust account; expense reimbursements ——Contingency contract § 16:76 § 16:77 — —Hourly rate § 16:78 ——Appeal of fee decision § 16:79 New POMS provision—Legal fees clarification --- When the SSA must authorize legal fees-In § 16:80 connection with a claim — When the SSA does not need to authorize legal § 16:81 — — When the SSA must authorize legal fees—In § 16:82 connection with a claim—Ambiguity

# CHAPTER 17. EXEMPTION FROM STATE INTANGIBLE AND REAL PROPERTY TAXES

### A. INTANGIBLE TAXES

- § 17:1 Florida intangible tax repealed § 17:2 Intangible personal property taxes
- § 17:3 —Nature
- § 17:4 —Annual tax return
- § 17:5 ——Exception
- § 17:6 ——Payment
- § 17:7 ——Tax rate
- § 17:8 ——Personal representatives, receivers, guardians, custodians and other fiduciaries
- § 17:9 ———Individuals
- § 17:10 —Examples of taxable intangible personal property
- § 17:11 —Examples of assets that are not taxable
- § 17:12 —Valuation
- § 17:13 —Enforcement
- § 17:14 ——Criminal penalties
- § 17:15 ——Interest on untimely filings
- § 17:16 ——Delinquency penalty
- § 17:17 ——Penalty payment for untimely filings and omissions
- § 17:18 —Amnesty programs

### B. REAL ESTATE TAXES

- § 17:19 The real estate tax system
- § 17:20 —Taxing districts
- § 17:21 —Tax year
- § 17:22 —Payment

§ 17:23	——Deferral if entitled to homestead exemption
§ 17:24	— Liens against the property; delinquency
§ 17:25	—Exemptions
§ 17:26	——Application for an exemption
§ 17:27	—Homestead exemption
§ 17:28	— —Beneficial title
§ 17:29	— — —Trusts
§ 17:30	——Proof of residence required
§ 17:31	— — Certificate of domicile
§ 17:32	——Additional reduction in assessed value for
	widows, widowers, the blind and disabled
§ 17:33	—Exemption for totally and permanently disabled
	persons
§ 17:34	— —Certificate
§ 17:35	—Exemption for disabled veterans
§ 17:36	—Additional homestead exemption for persons 65 and older
§ 17:37	—Disputes
§ 17:38	Portability of "Save our Homes" protection in the "Super Homestead"

# C. INCOME AND ESTATE TAXATION IN OTHER STATES

- § 17:39 State income and estate taxes
- § 17:40 Florida's tax haven
- § 17:41 Proof of Florida domicile

### D. FORMS

§ 17:42 Certificate of disability

# CHAPTER 18. MEDICARE AND HEALTH INSURANCE

## A. MEDICARE

- § 18:1 Introduction
- § 18:2 Eligible persons
- § 18:3 —Age 65
- § 18:4 —People with disabilities
- § 18:5 —Voluntary purchase of coverage
- § 18:6 —State payments for qualified Medicare beneficiaries (QMBs) and special low income Medicare beneficiaries (SLMBs)
- § 18:7 Benefits

\$ 1Q.Q	Part A Hagnital ingurance hanofits
§ 18:8 § 18:9	—Part A—Hospital insurance benefits ——Benefit periods
§ 18.3 § 18:10	— — — Inpatient hospital care
§ 18:10	— — — Covered services
§ 18.11	— — — — Covered services — — — Medicines
§ 18.12 § 18:13	— — — Patient's expense
-	
§ 18:14	——————————————————————————————————————
§ 18:15 § 18:16	— ——Skilled nursing facility (SNF) — — — Definition of "skilled" care
§ 18:16 § 18:17	——————————————————————————————————————
-	
§ 18:18 § 18:19	— — — Patient's expenses — — — Home health care
§ 18.19 § 18:20	— — Trome nearth care — — — Benefits
§ 18.20 § 18:21	— — — Homebound care
§ 18.21 § 18:22	— — — Patient's expenses
§ 18.22	— — — ratient's expenses  — — — Hospice services
§ 18.23 § 18:24	— — — Hospice services — — — Benefits
§ 18.24 § 18:25	— — — — Patient's expenses
· ·	—Part B—Voluntary coverage
	— — Eligibility
	— — — Enginity — — — Benefits provided
§ 18:29	
§ 18.29 § 18:30	
0	— — — A-rays and raporatory tests  — — — — Ambulance services
§ 18:31	
§ 18:32	
§ 18:33	e e
§ 18:34	———Physicians
§ 18:35	— — — — Therapy
§ 18:36	————Mammograms and pap smears
§ 18:37	————Dressings and splints
§ 18:38	———Prosthetic devices
§ 18:39	———Rural claims services
§ 18:40	— — — Dialysis
0	— — — Inoculations
§ 18:42	————Prostrate cancer screening
§ 18:43	————Colorectal cancer screening
§ 18:44	————Diabetes monitoring
§ 18:45	———Bone mass measurement
§ 18:46	———Patient's deductible and expenses
§ 18:47	Additional Part B Benefits
§ 18:48	Benefits—Part B—Voluntary coverage—Patient's
	deductible and expenses—Services abroad
§ 18:49	———"Free" services
§ 18:50	————Services provided by relatives

8 10 51	TT 1/1 ' ' 11
§ 18:51	————Health services required by war
§ 18:52	————Checkups
§ 18:53	— — — Eyeglasses — — — —Dentists
§ 18:54	
§ 18:55	———Hearing aids
§ 18:56	— — — Immunizations
§ 18:57	————Cosmetic surgery
§ 18:58	——————————————————————————————————————
§ 18:59	— — — Workmen's compensation
§ 18:60	— — — Auto accidents
§ 18:61	———Employee health plans
§ 18:62	—Cost cutting features
§ 18:63	— —Only approved amounts are paid
§ 18:64	———Assignments limits fees
§ 18:65	——Diagnostic related groups (DRGs) limit coverage
§ 18:66	——Deductibles, coinsurance and premiums
§ 18:67	—Processing of claims
§ 18:68	——Part A procedures
§ 18:69	——Part B procedures
§ 18:70	Medicare Part C (a/k/a Medicare Advantage— Formerly known as Medicare + Choice program)
§ 18:71	——Types of plans
§ 18:72	———Coordinated care plans
§ 18:73	— — Private fee-for-service plan
§ 18:74	———Who may enroll in Part C plans
§ 18:75	— — —Grievance procedures
§ 18:76	Medicare Quality of Care and the Affordable Care Act
§ 18:77	ACA provisions—Medicare—Quality of care
	improvements—Hospital value-based purchasing
	program
§ 18:78	———Physician quality reporting system
§ 18:79	———"Five star" bonus plan
§ 18:80	— — —Accountable care organizations
§ 18:81	———Electronic Health Records (EHR)
	EDICARE SUPPLEMENT INSURANCE
(M	EDIGAP)
§ 18:82	Medicare Part D (prescription drug plan)
§ 18:83	Medicare Part D (a/k/a prescription drug plan)—
2 10.00	Eligibility
§ 18:84	Medicare Part D (prescription drug plan)—Costs
§ 18:85	—Costs and disadvantages
	—Costs and disadvantages —Subsidies
§ 18:86	
§ 18:87	Medigap insurance

```
§ 18:88
          —Tax deductions
§ 18:89
          Standardized Medigap plans
§ 18:90
          —Plan A
§ 18:91
          — —Coinsurance
§ 18:92
          --- Reserve-day coinsurance
          ——All hospital gap expenses
§ 18:93
          — —Blood
§ 18:94
          -- Medicare Part B coinsurance and mental
§ 18:95
           health services
          —Plan B
§ 18:96
§ 18:97
          —Plan C
§ 18:98
          —Plan D
          ——Some Plan C coverage
§ 18:99
          — —Costs of at-home assistance
§ 18:100
§ 18:101
          —Plan E
          —Plan F
§ 18:102
§ 18:103
          -Plan G
          —Plan H
§ 18:104
§ 18:105
          —Plan I
§ 18:106
          —Plan J
          -Extra coverage
§ 18:107
§ 18:108
          Medigap select
§ 18:109
          —Premium payments
C.
    OTHER INSURANCE
§ 18:110
          Hospital indemnity insurance
§ 18:111
          Specified disease insurance
§ 18:112
          Employer health plans
§ 18:113
          —Advantages
          ——No waiting period for coverage
§ 18:114
          — —Lower premium costs
§ 18:115
§ 18:116
          ——All employees entitled to same benefits
§ 18:117
          — —Continuance of coverage after retirement
§ 18:118
          —Coverage under Medicare and group plan
§ 18:119
          — — Medicare Part A payments
§ 18:120
          -- Medicare Part B payments
§ 18:121
          — Medicare coverage if group plan fails to pay
§ 18:122
          Member group insurance plans
          Attorney's role in securing health insurance benefits
§ 18:123
           for the client
§ 18:124
          Attorney's role—Appealing Medicare eligibility or
           coverage
§ 18:125
          ——Part A appeals
```

Medical income tax deductions

§ 18:126

# CHAPTER 19. AMERICANS WITH DISABILITIES ACT

### A. PROTECTIONS AFFORDED BY THE ADA

§ 19:1	Scope of the ADA
§ 19:2	—Effect on state and local governments
§ 19:3	Persons protected; definition of disability
§ 19:4	—Limited performance of major life activities
§ 19:5	—Aged persons
§ 19:6	Discrimination in employment
§ 19:7	—Employers affected
§ 19:8	—Screening employees for disability
§ 19:9	—Reasonable accommodations are required
§ 19:10	Access to transportation
§ 19:11	Access to public accommodations
§ 19:12	Availability of telecommunications devices for the deaf (TDD)

# B. IMPLEMENTATION AND ENFORCEMENT

- § 19:13 Implementation by various federal agencies§ 19:14 Administrative or judicial enforcement
- § 19:15 Judicial enforcement instructions

# CHAPTER 20. OLDER AMERICANS ACT & OTHER GOVERNMENT PROGRAMS FOR SENIORS

### A. PURPOSE AND ADMINISTRATION

- § 20:1 Purpose of the Older Americans Act
- § 20:2 Administration
- § 20:3 —Funding
- § 20:4 —State agency: Department of Elder Affairs (DOEA)

### B. SCOPE OF THE OLDER AMERICANS ACT

§ 20:5 Specific programs

### C. OTHER PROGRAMS FOR SENIORS

- § 20:6 Community Care for the Elderly (CCE) Program
- § 20:7 CCE Eligibility requirements
- § 20:8 Alzheimer's Disease Initiative
- § 20:9 Eligibility

§ 20:10 ADI Services
§ 20:11 Home Care for the Elderly (HCE)
§ 20:12 General Eligibility Criteria
§ 20:13 The RELIEF Program
§ 20:14 General eligibility criteria:

# Volume 15

# CHAPTER 21. GENERAL CONSIDERATIONS WHEN PLANNING FOR INCAPACITY

### A. INTRODUCTION

- § 21:1 Defining incapacity
- § 21:2 Practice of preventive law

# B. PLANNING FOR FINANCIAL AND PERSONAL SECURITY

- § 21:3 Goals of planning for incapacity
- § 21:4 —Client's financial security
- § 21:5 ——Investments
- § 21:6 ——Insurance
- § 21:7 ——Government benefits
- $\S 21:8$  ———Special needs trusts
- § 21:9 ——Caregivers' financial security
- § 21:10 —Client's personal security
- § 21:11 ——Support mechanisms; guardians
- § 21:12 ——Support providers
- § 21:13 ——Freedom from abuse
- § 21:14 ——Environment
- § 21:15 Particular needs to be considered
- § 21:16 —Financial protection
- § 21:17 —Financial management
- § 21:18 —Health care decisions
- § 21:19 —At-home care
- § 21:20 —Respite services
- § 21:21 —Supervision of client in nursing home
- § 21:22 —Social interaction

### C. OTHER PROFESSIONALS

§ 21:23 Psychological aid

§ 21:24	Interdisciplinary approach
§ 21:25	—Geriatric care managers
§ 21:26	—Gerontologists
§ 21:27	—Psychological professionals
§ 21:28	—Social workers
§ 21:29	-Morticians
§ 21:30	—Financial advisors—Money buys care
§ 21:31	—Tax advisors

## D. SPECIFIC PLANNING TOOLS

§ 21:32	Planning tools
§ 21:33	—Trusts
§ 21:34	—Powers of attorney
§ 21:35	—Health care surrogates
§ 21:36	—Guardianship
§ 21:37	—Administrative action
§ 21:38	—Criminal proceedings
8 21.39	—Civil suit

# CHAPTER 22. CHOOSING THE RESIDENTIAL SETTING

# A. OPTIONS AND CONSIDERATIONS

A
Attorney's role
Access to physicians' services
Residential choices
Choosing to remain at home
—Nurses' aides
——Advantages
— —Disadvantages
—Charity help
—Geriatric care management
—Family or friends
—Home health care providers
—Home furnishings and layout
Assisted living facilities (ALFs)
—ALF specialty licenses
Living with relatives
Continuing care retirement communities
Choice of facilities under HMOs

## B. EVALUATING THE CLIENT'S CAPABILITIES

§ 22:18 Assessment formula

### C. SENIOR COMMUNITIES

- § 22:19 Introduction
- § 22:20 Federal Housing for Older Persons Act of 1995
- § 22:21 —Criteria
- § 22:22 —Difficult to challenge
- § 22:23 —Reasons for restrictions
- § 22:24 Senior citizen community criteria

### D. FORMS

- § 22:25 Assessment of capability
- § 22:26 Contract for care services (non–Medicaid qualifications)
- § 22:27 Contract for housing/care services

# CHAPTER 23. REGULATION OF NURSING HOMES AND ASSISTED LIVING FACILITIES

# A. OVERVIEW OF THE REGULATION OF NURSING HOMES AND OTHER LONG-TERM CARE FACILITIES

- § 23:1 Introduction
- § 23:2 —Florida's findings
- § 23:3 Woes of nursing homes
- § 23:4 Causes of litigation
- § 23:5 Gay elders neglected
- § 23:6 Long-term care ombudsman council
- § 23:7 —Administration; ombudsman
- § 23:8 —Duties
- § 23:9 —Response to complaints
- § 23:10 —Facilities required to notify residents of LTCOC
- § 23:11 —Penalties for interference with ombudsman

### B. REGULATION OF NURSING HOMES

- § 23:12 Licensing and operation of nursing homes
- § 23:13 —Civil enforcement
- § 23:14 ——Election
- § 23:15 ——Statutory remedy
- § 23:16 ——Medical malpractice
- § 23:17 ——Restrictions on punitive damages
- § 23:18 ——Considerations of trial judge on punitive damages
- § 23:19 ——Attorney's fees

```
§ 23:20
         --- Negligence definition
§ 23:21
         —Licensing
§ 23:22
         —Resident rights
§ 23:23
         ——Rules and regulations
§ 23:24
         --- Notification of room change
§ 23:25
         --- Resident's access to the facility's inspection
          reports
§ 23:26
         — —Civil and religious liberties
         — — Privacy
§ 23:27
         — — Dignity
§ 23:28
§ 23:29
         ——Abuse prohibited
§ 23:30
         — —Communication; visiting hours
§ 23:31
         ——Access to the resident by others
         --Grievances
§ 23:32
§ 23:33
         ——Resident groups
§ 23:34
         — —Activities and services
§ 23:35
         — —Financial affairs
         ——Possessions
§ 23:36
§ 23:37
         ——Health care services
§ 23:38
         — Choice of physician
         — —Information concerning the resident's medical
§ 23:39
          condition
§ 23:40
         — Right to refuse treatment
§ 23:41
         --- Bed reservations in the event of hospitalization
§ 23:42
         — — Discharge or transfer
§ 23:43
         —Nursing home management
§ 23:44
         — —administrator
         — Physician for regular and emergency services
§ 23:45
§ 23:46
         ——Emergency medication kit
§ 23:47
         ——Residents' access to health-related services
§ 23:48
         ---Safe and sanitary premises
         ---Food service
§ 23:49
         —Records
§ 23:50
         ——Personnel records
§ 23:51
§ 23:52
         ———Certified personnel required
§ 23:53
         ——Care and treatment records
         — —Contracts with residents
§ 23:54
§ 23:55
         -Facility prohibited from acting as trustee
§ 23:56
         ——Inspection comparisons
```

# C. REGULATION OF ASSISTED LIVING FACILITIES

§ 23:57 Assisted living facilities§ 23:58 —Standards of operation

§ 23:59 -Extended congregate care services § 23:60 ——Physical environment § 23:61 ——Staffing — —Nurses § 23:62 § 23:63 ——Staff training § 23:64 — — Dignity § 23:65 — —Resident's choices § 23:66 — — Criteria for residency —Caring for patients with Alzheimer's disease § 23:67 § 23:68 —Contracts with residents § 23:69 —Resident's bill of rights § 23:70 —Civil actions § 23:71 Other facilities § 23:72 Competition among hospitals, nursing homes and ALFs § 23:73 Medicaid ALF—Waiver program § 23:74 Attorney's role -Who may bring cause of action § 23:75

### D. APPENDIX

§ 23:76 AHCA staffing requirements

# CHAPTER 24. LONG-TERM CARE INSURANCE

# A. USING LONG-TERM CARE INSURANCE IN PLANNING FOR INCAPACITY

§ 24:1 Introduction § 24:2 —Governing law § 24:3 Types of coverage § 24:4 —In-home care § 24:5 —Assisted living § 24:6 -Nursing home care § 24:7 —Tie-in policies § 24:8 —Partnership policies § 24:9 —Partnership policy eligibility criteria —Considerations prior to purchase § 24:10 § 24:11 ——Cost § 24:12 —Tax break § 24:13 —Pre-existing condition § 24:14 —Age —Restrictive definitions § 24:15 § 24:16 Coverage—Under-coverage

- § 24:17 —Quality of the insurer § 24:18 Types of coverage—Quality of the insurer—Ratings
- § 24:19 ——Rating services

# B. EVALUATING SPECIFIC FEATURES OF A LONG-TERM CARE POLICY

- § 24:20 Recommended features
- § 24:21 —Term
- § 24:22 —Term of coverage—Lifetime coverage
- § 24:23 —Non-cancellation
- § 24:24 —Waiting period
- § 24:25 ——New waits
- § 24:26 —Nursing home restrictions
- § 24:27 —Pre-existing condition
- § 24:28 —Condition verification
- § 24:29 —Prior institutionalization
- § 24:30 —Right to return
- § 24:31 —Medicare benefits
- § 24:32 —Cost of living increases
- § 24:33 —Cognitive deficiencies
- § 24:34 —ADLs
- § 24:35 —Assisted care
- § 24:36 —Waiver of premium
- § 24:37 —Home health care
- § 24:38 —Per day benefits
- § 24:39 Conflicts of interest

## C. FORMS

§ 24:40 Long-term Care Insurance Memorandum for Client

## CHAPTER 25. MEDICAID

### A. OVERVIEW OF MEDICAID

- § 25:1 Purpose of Medicaid
- § 25:2 The Deficit Reduction Act (DRA)—Introduction
- § 25:3 —Public policy
- § 25:4 —Substance of changes
- § 25:5 —Gifting
- § 25:6 ——Increase to the look-back period
- $\S~25:7$  ——Change to penalty start date
- § 25:8 ——Effective date and penalty divisor
- § 25:9 —Hardship waivers
- § 25:10 —Annuities—Generally

§ 25:11	— — Traditional Single Premium Immediate
	Annuities (SPIAs)
§ 25:12	— — "Balloon" annuities no longer permitted
§ 25:13	—Income-first rule
§ 25:14	—Homestead equity rule
§ 25:15	—CCRC entrance fees
§ 25:16	Misconceptions about Medicaid
§ 25:17	—Only the aged qualify for Medicaid benefits
§ 25:18	-Aged persons come to Florida to take advantage of
	Medicaid
§ 25:19	—Wealthy people take advantage of Medicaid
§ 25:20	Misconceptions about the attorney's role
§ 25:21	—Opportunities for pro bono publico services

# B. FLORIDA'S ELDER CARE PUBLIC ASSISTANCE PROGRAMS

§	25:22	Administration of Medicaid by federal and local authorities
§	25:23	Medicaid benefits
8	25:24	—Temporary Aid for Needy Families (TANF)
-	25:25	—Refugee Assistance Program (RAP)
8	25:26	—SSI-related programs
8	25:27	— —Institutionalized Care Program (ICP)
_	25:28	——Home and Community Based Services (HCBS)
	25:29	——HCBS criteria
	25:30	———AL Medicaid waiver and the Long-Term
Ŭ		Diversion Program and the transition to Managed
		Care
§	25:31	— — Project AIDS care
§	25:32	— — Developmental services
§	25:33	———Aged/disabled adults
§	25:34	———Brain and spinal cord injury
§	25:35	Program of All-Inclusive Care for the Elderly
		(PACE)—Medicare and medicaid program
§	25:36	$Medicaid\ benefits{}Non{-}HCBS\ community\ Medicaid$
		programs
§	25:37	Non-Medicaid assistance: Optional State Supplementation (OSS)
§	25:38	—Eligibility
§	25:39	—Benefits
§	25:40	Non-Medicaid assistance: Home Care for the Elderly and Disabled $(HCE)$
§	25:41	Availability of Medicaid waiver programs
§	25:42	Effectiveness of Medicaid waivers for community-based services

	I HOMBI LIBBI L
§ 25:43	Waitlists for waiver programs
§ 25:44	1 0
§ 25:45	
§ 25:46	—Enrollment
C. T	HE MEDICAID APPLICATION PROCESS
§ 25:47	Overview of the application process; request for
	assistance
§ 25:48	—Time allowed for decisions on applications
§ 25:49	—Application date determines entitlement date
§ 25:50	—Documents requested
§ 25:51	—Proof of citizenship required
§ 25:52	——Proofs of citizenship
§ 25:53	—Alien status
§ 25:54	—Other miscellaneous documentation required
§ 25:55	
§ 25:56	· ·
§ 25:57	
§ 25:58	· ·
§ 25:59	_ · · · · · · · · · · · · · · · · · · ·
§ 25:60	Disclosing financial records
§ 25:61	—Particular financial records disclosure
§ 25:62	Applying for all other available benefits
D. H	EARINGS
§ 25:63	Purpose of a hearing
§ 25:64	—Right to and request for hearing
§ 25:65	— —Hearing assistance
§ 25:66	——Time limit for the request
§ 25:67	——Supervisory review of the request; optional
Ü	conference
§ 25:68	—Continuance of benefits
§ 25:69	—Notice of hearing
§ 25:70	—Conduct of hearing
§ 25:71	—Decision
§ 25:72	—Further appeals
	TATE'S POWER TO RECOVER FUNDS AND TO ENALIZE FRAUD
§ 25:73	Mandated recovery procedures
§ 25:74	—State's claim against the Medicaid recipient's estate
§ 25:75	—State's right to recover from third parties
§ 25:76	Claims against third parties when Medicaid recipient
	dies

§ 25:77 § 25:78 § 25:79 § 25:80	Fraud  —Fraudulent conveyance  —Provider fraud  —Federal criminalization unconstitutional		
F. RE	ASONS FOR MEDICAID PLANNING		
\$ 25:81 \$ 25:82 \$ 25:83 \$ 25:84	Necessity for planning ICP Medicaid eligibility  —Medicare and insurance provide insufficient coverage  — —Difficulties with long-term care insurance  —Limits on veterans' benefits		
§ 25:85 § 25:86 § 25:87	<ul> <li>Expense of paying out-of-pocket</li> <li>— Impoverishment</li> <li>— Community spouse resource allowance may be inadequate</li> </ul>		
§ 25:88	—Supplementing Medicaid coverage with private funds		
§ 25:89 § 25:90	—Preserving an inheritance for heirs  —Marital election share claim		
G. IN	G. INITIAL PLANNING CONSULTATION		
§ 25:91	Initial Medicaid planning consultation with the client		
§ 25:92 § 25:93	<ul> <li>—Identify the client's needs and goals</li> <li>— Medicaid benefits are inappropriate for wealthy clients</li> </ul>		
§ 25:94	— — —Comprehensive care is available for private pay clients		
§ 25:95	— — —Higher taxes and expenses		
§ 25:96 § 25:97	<ul><li>—Review alternative living arrangements</li><li>—Consider move closer to children/caregivers</li></ul>		
§ 25:98	—Explain the disadvantages of Medicaid		
§ 25:99 § 25:100	— —Red tape — —Limits on medical services		
§ 25:101	——Restrictions on choice of health care providers		
§ 25:102	<ul> <li>— Limited number of Medicaid beds in nursing homes</li> </ul>		
§ 25:103	— Managed care		
§ 25:104	——ALF waiver shortages—Discrimination against Medicaid customer		
§ 25:105	— Medicaid benefits may be broader in another state		
§ 25:106 § 25:107	<ul><li>— Quality of care</li><li>— Law and regulation changes</li></ul>		

§ 25:108	Intake procedure
§ 25:109	—Evaluation of client's health
§ 25:110	—Signatory capabilities
§ 25:111	—Consideration of family dynamics
§ 25:112	—Explanation of attorney's fees
§ 25:113	—Review documents required for application; five year look-back period
§ 25:114	—Explain assignment of right to third party
005 115	payment for medical care
§ 25:115	—Explain effect of receipt of Medicaid on Medicare coverage
§ 25:116	—Explain effect of receipt of Medicaid on the estate of the first spouse to die
H. EL	IGIBILITY CRITERIA
п. вы	IGIDILITI CITTEMA
§ 25:117	Eligibility criteria for ICP Medicaid and Diversion program
§ 25:118	—Assessment of appropriate placement and level of care
§ 25:119	——CARES team or doctor determines nursing
, 20.110	home care required
§ 25:120	——CARES team determines nursing home care
3	required—CARES team criteria; activities of daily living (ADLs)
§ 25:121	Effect of same-sex marriage on Medicaid eligibility
I. CAI	CULATING AND MANAGING INCOME FOR
	GIBILITY
§ 25:122	Exceeding the income cap causes disqualification
§ 25:123	—Other Medicaid benefits still available
§ 25:124	—When income may be retained above the income cap
§ 25:125	All available income is counted; transfers of income and assets are permitted
§ 25:126	—Income from jointly owned assets
§ 25:127	—Adding deductions back into certain payments
§ 25:128	—Infrequent or irregular income
§ 25:129	—Inheritances
§ 25:130	—Alimony and support
§ 25:130	—Social Security benefits
§ 25:132	—VA payments
§ 25:132	—Life insurance proceeds and death benefits
§ 25:134	—Vendor payments are excluded
§ 25:134 § 25:135	— Vendor payments are excluded  —Deductions from income
2 70.100	Deductions nom medite

## TABLE OF CONTENTS

§ 25:136	—Rental income deductions are allowed
§ 25:137	—In-kind benefits are excluded
§ 25:138	—Exclude assistance from government agencies
§ 25:139	—Other exclusions
§ 25:140	Community spouse may have unlimited income
§ 25:141	Minimum Monthly Maintenance Income Allowance (MMMIA)
§ 25:142	Community Spouse Income Allowance (CSIA)
J. ME	THODS FOR REDUCING EXCESS INCOME
§ 25:143	Qualified Domestic Relations Orders (QDRO) and Qualified Income Trusts
§ 25:144	Spouse's right to pension funds under a Qualified Domestic Relations Order (QDRO)
$\S 25:145$	—Procedure to obtain a QDRO
§ 25:146	— — Obtain information from the pension company
§ 25:147	——Confirm that the spouse qualifies for a QDRO
§ 25:148	——Contact with pensioner
§ 25:149	——File suit against the pensioner
§ 25:150	——Answer
§ 25:151	— —Hearing
§ 25:152	Qualified Income Trust (QIT)
§ 25:153	—Creation by Medicaid applicant or applicant's agent
§ 25:154	-Requirements; DCF approval
§ 25:155	— —Trust funds must be used to reimburse the state on death of Medicaid recipient
§ 25:156	——Accounting to DCF
$\S 25:157$	——Amending the trust
§ 25:158	——Income subject to the trust
§ 25:159	——Funding the QIT; minimum balances preferred
§ 25:160	——Payments from the trust
	RTHER ADJUSTMENTS TO INCOME AFTER DICAID ELIGIBILITY IS ESTABLISHED
MIL	DICAID ELIGIDILITT IS ESTABLISHED
§ 25:161	Patient's responsibility for certain costs
§ 25:162	Personal needs allowance (PNA)
§ 25:163	Adjusting the Community Spousal Resource Allowance (CSRA) to attain the minimum monthly maintenance income allowance (MMMIA)
§ 25:164	Community Spouse Income Allowance (CSIA)
§ 25:165	-Excess shelter costs
§ 25:166	Assets allowed to the non-institutionalized spouse; Spousal Impoverishment Act

\$ 95,167	Commuting the Community Space Decourse
§ 25:167	—Computing the Community Spousal Resource Allowance (CSRA)
§ 25:168	— — Raising the CSRA
§ 25:169	———How to do so
§ 25:170	—Effect of assets over the CSRA on eligibility
§ 25:171	Assets allowed to the institutionalized spouse
§ 25:172	When assets are valued
§ 25:173	Countable assets
§ 25:174	—Liquid assets
§ 25:175	—Disposable assets
§ 25:176	—Value of property subject to good faith effort to
0	sell
§ 25:177	—Equity value
§ 25:178	—Future interests
§ 25:179	—Life estates
§ 25:180	—Proceeds from asset sales; insurance proceeds
§ 25:181	—Bank accounts
§ 25:182	<ul> <li>— Effect of joint ownership of account</li> </ul>
§ 25:183	— — Joint account withdrawals
§ 25:184	— Rebutting the presumption of control over
	jointly-owned assets
$\S 25:185$	—Real estate
§ 25:186	— — Valuation of realty
§ 25:187	——Effect of effort to sell realty; unmarketable
	property
§ 25:188	— —Homestead exclusion
§ 25:189	———Effect of temporary absences from home
§ 25:190	———Proceeds from sale of homestead
§ 25:191	— — — Homes in other states
§ 25:192	———Value of a building lot
§ 25:193	—Income producing property
§ 25:194	—Value of an installment contract for sale of asset
§ 25:195	— — Fair market value return
§ 25:196	—Assets subject to guardianship
§ 25:197	—Stocks and bonds
§ 25:198	—Retirement funds
§ 25:199	<ul><li>— Waluation of IRAs and Keogh plans</li><li>—Burial contracts</li></ul>
§ 25:200	
§ 25:201 § 25:202	—Promissory notes
§ 25:202 § 25:203	<ul><li>Reverse mortgages and home equity conversions</li><li>Vehicles</li></ul>
§ 25:203 § 25:204	—Cash value of life insurance
-	
§ 25:205	—Personal property — —"Unusual value" items
§ 25:206 § 25:207	— — "Unusual item" statement
8 29:201	— — Unusuai item statement

§ 25:208	—Assets excluded by federal law
§ 25:209	When trust assets are considered available resources
§ 25:210	—Trust assets when trustee is the Medicaid applicant
§ 25:211	—Funds when Medicaid applicant is beneficiary of Totten trust
§ 25:212	—Testamentary trusts
§ 25:213	—Third-party trusts
§ 25:214	—Medicaid Qualifying Trust (MQT)
§ 25:215	—Effect of Omnibus Budget Reconciliation Act of 1993 (OBRA '93) on assets in trust
§ 25:216	——Trusts allowed for spouse, disabled beneficiary, or applicant
§ 25:217	——Pooled trusts for disabled persons

# L. ELIGIBILITY DISQUALIFICATION: PENALTY FOR UNCOMPENSATED TRANSFERS

§ 25:218	Effect of uncompensated transfers of assets or income (gifts) on Medicaid eligibility
§ 25:219	—Look back period
§ 25:220	——Look back period for transfers to trusts
§ 25:221	Determining the ineligibility period
§ 25:222	—Commencement of penalty period
§ 25:223	—Limitation on penalty period
§ 25:224	—Rectifying transfers by returning gifts
§ 25:225	Refusal to accept inheritance
§ 25:226	Purchase of annuities
§ 25:227	—Payout term
§ 25:228	Avoiding gift penalties
§ 25:229	Avoiding gift penalties: Calculating the penalty
§ 25:230	Post-DRA consecutive gifts are totaled
§ 25:231	Disadvantages of gifts
§ 25:232	Ethical planning in gifting and other transaction

# M. PERMITTED TRANSFERS TO REDUCE ASSETS

§ 25:233	Permitted transfers
§ 25:234	—Transfers for fair compensation
§ 25:235	—Transfers to one's own child under 21
§ 25:236	—Allowable transfers of homestead
§ 25:237	— — Homestead to child under 21, blind or disabled
	child
§ 25:238	— —Homestead to adult child caregiver
§ 25:239	— —Homestead to sibling

§ 25:240	—Gift of unmarketable assets
§ 25:241	—Gifts of life estates
§ 25:242	—Transfer of any asset to a trust for blind or
	disabled child or grandchild; pooled trusts
§ 25:243	—Gifts to third party for benefit of a spouse
§ 25:244	—Interspousal transfers
§ 25:245	——Court-ordered asset transfers for support or
\$ 05.046	alimony
§ 25:246	—Transfers by the community spouse to third party after grant of benefits
§ 25:247	—Transfers with retained life estate and "Lady
5 20.211	Bird" Deeds
§ 25:248	Assignment of income
§ 25:249	—Assets received after Medicaid approval
§ 25:250	——Assets received by community spouse
§ 25:251	<ul> <li>—Assets received by institutionalized spouse</li> </ul>
$\S 25:252$	———"Allowable persons"
§ 25:253	Gifts not made for Medicaid planning
§ 25:254	Rebutting the presumption that transfer was made to establish Medicaid eligibility
§ 25:255	Donor-funded irrevocable gifting trust (IGT)
§ 25:256	Donor-funded irrevocable gifting trust (IGT): negatives
§ 25:257	Donor-funded irrevocable gifting trust (IGT):
§ 25:257 § 25:258	Donor-funded irrevocable gifting trust (IGT): positives Donee-funded irrevocable trust
§ 25:258	positives
§ 25:258 <b>N. ME</b>	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS
\$ 25:258  N. ME \$ 25:259	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS Introduction
\$ 25:258 <b>N. ME</b> \$ 25:259 \$ 25:260	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions
§ 25:258  N. ME  § 25:259  § 25:260  § 25:261	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions — Temporary exclusion of assets being sold
\$ 25:258  N. ME \$ 25:259 \$ 25:260 \$ 25:261 \$ 25:262	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions — Temporary exclusion of assets being sold — Permanent exclusion of unmarketable assets
\$ 25:258  N. ME \$ 25:259 \$ 25:260 \$ 25:261 \$ 25:262 \$ 25:263	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions —Temporary exclusion of assets being sold —Permanent exclusion of unmarketable assets —Appeal to keep excess assets
\$ 25:258  N. ME \$ 25:259 \$ 25:260 \$ 25:261 \$ 25:262 \$ 25:263 \$ 25:264	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions —Temporary exclusion of assets being sold —Permanent exclusion of unmarketable assets —Appeal to keep excess assets —Hardship exclusion
\$ 25:258  N. ME \$ 25:259 \$ 25:260 \$ 25:261 \$ 25:262 \$ 25:263	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions —Temporary exclusion of assets being sold —Permanent exclusion of unmarketable assets —Appeal to keep excess assets —Hardship exclusion —Essential income-producing property
\$ 25:258  N. ME \$ 25:259 \$ 25:260 \$ 25:261 \$ 25:262 \$ 25:263 \$ 25:264 \$ 25:265 \$ 25:266	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions —Temporary exclusion of assets being sold —Permanent exclusion of unmarketable assets —Appeal to keep excess assets —Hardship exclusion —Essential income-producing property —Spend down
\$ 25:258  N. ME \$ 25:259 \$ 25:260 \$ 25:261 \$ 25:262 \$ 25:263 \$ 25:264 \$ 25:265	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions —Temporary exclusion of assets being sold —Permanent exclusion of unmarketable assets —Appeal to keep excess assets —Hardship exclusion —Essential income-producing property —Spend down —Disadvantages of spend downs
\$ 25:258  N. ME \$ 25:259 \$ 25:260 \$ 25:261 \$ 25:262 \$ 25:263 \$ 25:264 \$ 25:265 \$ 25:266 \$ 25:266	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions —Temporary exclusion of assets being sold —Permanent exclusion of unmarketable assets —Appeal to keep excess assets —Hardship exclusion —Essential income-producing property —Spend down
\$ 25:258  N. ME \$ 25:259 \$ 25:260 \$ 25:261 \$ 25:262 \$ 25:263 \$ 25:264 \$ 25:265 \$ 25:266 \$ 25:267 \$ 25:268	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions —Temporary exclusion of assets being sold —Permanent exclusion of unmarketable assets —Appeal to keep excess assets —Hardship exclusion —Essential income-producing property —Spend down —Disadvantages of spend downs —Spend downs allowed
\$ 25:258 <b>N. ME</b> \$ 25:259 \$ 25:260 \$ 25:261 \$ 25:262 \$ 25:263 \$ 25:264 \$ 25:265 \$ 25:266 \$ 25:267 \$ 25:268 \$ 25:269	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions —Temporary exclusion of assets being sold —Permanent exclusion of unmarketable assets —Appeal to keep excess assets —Hardship exclusion —Essential income-producing property —Spend down —Disadvantages of spend downs —Spend downs allowed ——Purchase a home or a building lot
\$ 25:258  N. ME  \$ 25:259  \$ 25:260  \$ 25:261  \$ 25:262  \$ 25:263  \$ 25:264  \$ 25:265  \$ 25:266  \$ 25:266  \$ 25:267  \$ 25:268  \$ 25:269  \$ 25:270	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions —Temporary exclusion of assets being sold —Permanent exclusion of unmarketable assets —Appeal to keep excess assets —Hardship exclusion —Essential income-producing property —Spend down —Disadvantages of spend downs —Spend downs allowed ——Purchase a home or a building lot ——Remodel and repair ——Refurnish and buy personal belongings
\$ 25:258  N. ME \$ 25:259 \$ 25:260 \$ 25:261 \$ 25:262 \$ 25:263 \$ 25:264 \$ 25:265 \$ 25:266 \$ 25:267 \$ 25:268 \$ 25:269 \$ 25:270 \$ 25:271	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions —Temporary exclusion of assets being sold —Permanent exclusion of unmarketable assets —Appeal to keep excess assets —Hardship exclusion —Essential income-producing property —Spend down —Disadvantages of spend downs —Spend downs allowed ——Purchase a home or a building lot ——Remodel and repair ——Refurnish and buy personal belongings ——Replace lost wedding or engagement ring
\$ 25:258  N. ME \$ 25:259 \$ 25:260 \$ 25:261 \$ 25:262 \$ 25:263 \$ 25:264 \$ 25:265 \$ 25:266 \$ 25:267 \$ 25:268 \$ 25:269 \$ 25:270 \$ 25:271 \$ 25:272	positives Donee-funded irrevocable trust  THODS FOR PRESERVING ASSETS  Introduction —Exclusions —Temporary exclusion of assets being sold —Permanent exclusion of unmarketable assets —Appeal to keep excess assets —Hardship exclusion —Essential income-producing property —Spend down —Disadvantages of spend downs —Spend downs allowed ——Purchase a home or a building lot ——Remodel and repair ——Refurnish and buy personal belongings ——Replace lost wedding or engagement ring ——Buy a car

## TABLE OF CONTENTS

8 05.075	Dropov funeral and hurial contracts
§ 25:275	- ·
§ 25:276	———Purchase medical equipment and devices
§ 25:277	—Using investments to convert assets to a non- countable form
§ 25:278	Non-countable investments—Applicants may need to
_	avoid income-producing investments
§ 25:279	—Benefiting children or grandchildren
§ 25:280	—An immediate annuity
§ 25:281	——State as beneficiary
§ 25:282	——Equal payments counted as income
§ 25:283	—Immediate annuity—Annuitant and beneficiaries
§ 25:284	Non-countable investment—Immediate annuity—No cash-in value
\$ 05.005	——Taxes
§ 25:285	
§ 25:286	——Investment amount
§ 25:287	—DRA-compliant promissory note
§ 25:288	Non-countable investments—Limited partnership interest
8 25,200	
§ 25:289	—Purchase a life estate deed —Price of the life estate
§ 25:290	——Procedure
§ 25:291	
§ 25:292	——Death of life tenant
§ 25:293	——Assignment of life estate
§ 25:294	——Consequences for the property owner
§ 25:295	——Rental or sale of property
§ 25:296	—Term life insurance
§ 25:297	—Purchase services pursuant to a personal service contract
§ 25:298	——Pricing the services
§ 25:299	——Service provider is taxed
§ 25:300	——Documentation and whether time sheets are
_	required
§ 25:301	Preserving the home
§ 25:302	—Need for protective steps
§ 25:303	— — Gift to third party
§ 25:304	——Gift reserving life use
§ 25:305	——Conveyance on contract for sale
§ 25:306	——Sale to third party
§ 25:307	——Conveyance by "Lady Bird" deed
§ 25:308	——Deed to child living in home 2 years
§ 25:309	——Deed to sibling
§ 25:310	——Combination transactions
§ 25:311	Effect of divorce on Medicaid eligibility
§ 25:312	—Grounds for divorce
§ 25:313	—Assets transferred pursuant to divorce decree
2 70.010	Tibboto transferred pursuant to divorce decree

§ 25:314	—Disadvantages
§ 25:315	Spousal refusal to support
§ 25:316	—Caveat
§ 25:317	——How exercised
§ 25:318	——Conditions for refusal to be effective
§ 25:319	<ul> <li>— Florida's right to proceed to bring support proceedings</li> </ul>
§ 25:320	———Equities of the third party
§ 25:321	— — —Contrary law
§ 25:322	— — Worst case scenarios
§ 25:323	— —Community spouse income allowance
§ 25:324	— —Florida's right to proceed to bring support proceedings—If spousal refusal CS wants to pay extras
§ 25:325	Avoid marital election share claims
§ 25:326	Avoid marital election claims—Create combined
3 20.020	elective share/special needs trust
§ 25:327	Avoid marital election share claims—Power of attorney
§ 25:328	——Act of election by attorney-in-fact requires court
§ 25:329	approval Guardianship
§ 25:329 § 25:330	—State action
§ 25:331	—Postnuptial agreement
§ 25:332	-Written consents
§ 25:333	—Court education
O. NEV	W ASSETS
§ 25:334	After acquired or found assets
§ 25:335	—Common new assets
§ 25:336	Safeguarding Medicaid continuance
§ 25:337	—Prompt action
§ 25:338	What is income
§ 25:339	—Create a QIT
§ 25:340	—Create a Special Needs Trust (SNT)
§ 25:341	—Exercise other options
§ 25:342	—Show unavailability or no market value
§ 25:343	—Change of circumstances
P. CHI	ECKLIST

### P. CHECKLIST

§ 25:344 Summary of income and exclusions from income

# Q. FORMS

 $\$  25:345 Request for assistance (RFA) form and application packet

§ 25:346	Contact slip
§ 25:347	Public assistance eligibility information sheet
§ 25:348	Intent to return home statement
§ 25:349	Informed consent
§ 25:350	Medicaid financial release
§ 25:351	Affidavit for designated representative
§ 25:352	Declaration of United States citizenship/lawful alien status
§ 25:353	Your rights and responsibilities
§ 25:354	Management and protection of personal health information policy
$\S~25:355$	Affidavit for designated representative
§ 25:356	Intake memo: Medicaid planning information
$\S~25:357$	Letter to pension fund
§ 25:358	Retainer agreement
§ 25:359	Petition for separate maintenance and domestic relations order
§ 25:360	Summons
§ 25:361	Response
§ 25:362	Notice of hearing
§ 25:363	Order of separate maintenance/qualified domestic relations order
§ 25:364	Letter enclosing order
§ 25:365	Power of attorney
§ 25:366	Income-only trust agreement
§ 25:367	Amended income-only trust agreement
§ 25:368	Income-only trust: Instructions on funding
§ 25:369	Assignment of income
§ 25:370	Form of irrevocable trust
§ 25:371	Self Canceling Note (SCIN)
§ 25:372	Loan Committal Agreement I
§ 25:373	Renewable promissory note
§ 25:374	Loan Committal Agreement II
§ 25:375	Contract for purchase and sale of life estate interest
§ 25:376	Deed for purchase and sale of life estate interest
§ 25:377	Contract for sale
§ 25:378	Contract for personal services
§ 25:379	Escrow agreement
§ 25:380	Deed of life estate to spouse
§ 25:381	Notice of spousal refusal of support
§ 25:382	Assignment of right of support
§ 25:383	Letter from Janet Reno to Newt Gingrich
§ 25:384	Form of elective share/special needs trust and will
§ 25:385	DCF Form 3008—Physician's statement of "medically needy" status

# R. APPENDIX

§ 25:386	Administrative definitions of intermediate care and skilled care, Fla Admin Code R. 59G-4.180 and 59G-4.290
§ 25:387	The Life Expectancy Table ACCESS Manual at
§ 25:388	Appendix A 14 The Life Estate and Remainder Interest Table
g 20:000	The Life Estate and Remainder Interest Table, ACCESS Manual at Appendix A 17
§ 25:389	Transfer Penalty Determination Process
§ 25:390	Guideline for Evaluating Annuities

# **CHAPTER 26. POWERS OF ATTORNEY**

# A. PURPOSE, TYPES AND SCOPE OF POWER; WHO MAY EXERCISE

§	26:1	Purpose of a power of attorney
§	26:2	Types of powers of attorney
§	26:3	—Who may be a principal
8	26:4	—Forms, in general
8	26:5	Durable power; requisites—Execution requirements
§	26:6	—When exercisable
§	26:7	—Contingent or "Springing Powers" of attorney
§	26:8	—"Springing" Powers—Proof of incapacity
§	26:9	—Affidavit of viability
§	26:10	—Who may serve as attorney in fact
§	26:11	—Termination of power
§	26:12	— Effect of death of principal
§	26:13	— Effect of incompetency proceedings
§	26:14	— —Effect of incapacity proceedings—Health care
		decisions
§	26:15	——Revocation
§	26:16	—Reliance by third parties
§	26:17	— — Affidavit of standing
§	26:18	——Immunity of third party acting in good faith
		without notice
§	26:19	——Liability of third parties for refusal to honor
§	26:20	— —Time limits and statutory protocol for acceptance
§	26:21	—Property interests subject to the power
§	26:22	—Multiple attorneys-in-fact
§	26:23	——Dissent
§	26:24	— — Death, resignation, or incapacity of
		attorney-in-fact
§	26:25	—Resignation
§	26:26	Attorney's fees

# **B. SPECIFIC POWERS**

of attorney

Revocation of power of attorney

§ 26:56

§ 26:27	Authorized powers
§ 26:28	—Non-modifiable and modifiable standards
§ 26:29	—Non-modifiable standards
§ 26:30	—Modifiable standards
§ 26:31	—Durable power; requisites—Accountings and disclosures
§ 26:32	—Banking transactions
§ 26:33	—Investment transactions
§ 26:34	—"Super Powers"; Estate planning authority requiring separate signed enumeration
§ 26:35	——Protection against exploitation
§ 26:36	——Gifting powers
§ 26:37	Introduction—Convey and mortgage a homestead
§ 26:38	——Recordation of the power of attorney with land records
§ 26:39	—Other suggested prohibitions
§ 26:40	——Restrict payments of legal obligations of others
§ 26:41	—Extraordinary powers—Handling tax matters
§ 26:42	——Managing business operations
§ 26:43	——Applying for public assistance
§ 26:44	——Applying for insurance benefits
§ 26:45	——Exercising fiduciary powers
§ 26:46	——Organizing care management
§ 26:47	<ul> <li>—Applying for admission to nursing home or assisted living facility</li> </ul>
§ 26:48	——Making health care decisions
§ 26:49	——Marital election share rights
§ 26:50	—Assignment of rights of support
C. FO	PRMS
§ 26:51	Elder law power of attorney
§ 26:52	Statutory form of attorney-in-fact's affidavit
§ 26:53	Durable Power of Attorney with Special Notary
§ 26:54	Escrow agreement to hold power of attorney
§ 26:55	Physician's affidavit to invoke use of springing power

# CHAPTER 27. ADVANCE HEALTH CARE DIRECTIVES AND ANATOMICAL GIFTS

# A. RIGHT TO REFUSE TREATMENT; ENFORCEMENT OF HEALTH CARE DIRECTIVES

§ 27:1	Introduction
§ 27:2	—Types of advance health care directives
§ 27:3	—Defining "terminal condition"
§ 27:4	—Defining—"End stage condition"
§ 27:5	——"Terminal condition"
§ 27:6	——"Persistent vegetative state"
§ 27:7	—Defining "terminal condition"—Older advance
	directives
§ 27:8	—Advanced directives executed in another state
§ 27:9	—Incapacity
§ 27:10	—Restrictions
§ 27:11	Enforcement of health care directives
§ 27:12	—Effect on insurance
§ 27:13	—Health care provider's immunity from liability
§ 27:14	—Health care facility's duty to provide patient with
	information
§ 27:15	—Penalty for health care facility's interference with
	patient's rights
§ 27:16	
§ 27:17	——Review of surrogate's decision
§ 27:18	——Petition
§ 27:19	
§ 27:20	e
§ 27:21	—Guardian's decisions
§ 27:22	——Limits on guardian's decisions
§ 27:23	———Limit on placement
§ 27:24	
§ 27:25	
§ 27:26	— —Baker Act
§ 27:27	— — —Guardian advocate

# **B. LIVING WILLS**

§ 27:28 Living wills
§ 27:29 —Execution and witnesses
§ 27:30 —Certification of patient's terminal condition
§ 27:31 —Publication
§ 27:32 —Content

### TABLE OF CONTENTS

§ 27:45

§ 27:33 § 27:34	— — —Patient's condition when will is to be enforced — — —Treatments to be stopped or withheld
§ 27:35	— — —Autopsies
§ 27:36	— — Special provisions to address individual
	beliefs
$\S 27:37$	— — —HIPAA
$\S 27:38$	—Palliative care
$\S 27:39$	——Definition
§ 27:40	— —Guardians—Palliative care decisions
$\S 27:41$	— — —Anatomical gifts
§ 27:42	—When health care provider may disregard patient's directives
§ 27:43	Hospice care
§ 27:44	—Hospice criteria

### C. HEALTH CARE SURROGATES

—Hospice services

- § 27:46 Health care surrogate
  § 27:47 —Execution
  § 27:48 —Publication
  § 27:49 —Capacity
  § 27:50 —Authority of the surrogate
  § 27:51 Certain authority must be expressly stated
- § 27:52 —Authority when principal's wishes are unknown § 27:53 —Who may be proxy

### D. DO NOT RESUSCITATE ORDERS

\$ 27:54 Do Not Resuscitate Orders (DNROs)
 \$ 27:55 —DNRO form
 \$ 27:56 — Provisions
 \$ 27:57 — Signatures
 \$ 27:58 — Bracelet
 \$ 27:59 — EMS procedures

## E. ANATOMICAL GIFTS

§ 27:60 Anatomical gifts —Donors § 27:61 ——Persons other than the decedent § 27:62 § 27:63 ———Bar to gift § 27:64 — — Medical examination required § 27:65 —Donees — —Discrimination § 27:66 ——Refusing the gift § 27:67

§ 27:68	—Declaration of gift
§ 27:69	— —Form of declaration
§ 27:70	— — Specific donee; attending physician
§ 27:71	— — Delivery
§ 27:72	——Revocation or amendment
§ 27:73	—Harvesting
§ 27:74	— —Time of death
§ 27:75	— —Testing
§ 27:76	— —Expense
§ 27:77	——Embalming a body gifted for scientific purposes
§ 27:78	——Custody of parts of body that are not gifted
§ 27:79	—Donations of eyes and corneas
§ 27:80	— — Harvested by medical examiners (coroners)
§ 27:81	——Harvested by funeral directors

### F. ASSISTED SUICIDE

§ 27:82 Prohibition § 27:83 -Assisted suicide and euthanasia distinguished § 27:84 -What other jurisdictions are doing § 27:85 Recent case law § 27:86 —Federal cases -Florida case § 27:87 § 27:88 —Present status § 27:89 —Prospects of legislation

### G. FORMS

§ 27:90 Form for expedited judicial intervention Combined living will and health care surrogate/power § 27:91 of attorney form § 27:92 Form of do not resuscitate order § 27:93 Suggested anatomical gift declaration form § 27:94 Halachic health care advance directives § 27:95 Health care advance directives for Christian Science practitioners Health care advance directives with living will, § 27:96 health care surrogate designation, and durable power of attorney Health care advance directive including health care § 27:97 surrogate designation, and durable power of attorney for health care in accordance with Jewish Orthodox law

§ 28:22

## CHAPTER 28. GUARDIANSHIP

### A. INTRODUCTION

§ 28:1	Purpose
§ 28:2	Governing law
§ 28:3	Jurisdiction and venue
§ 28:4	Forms, in general
§ 28:5	Definitions
§ 28:6	—Alleged Incapacitated Person (AIP)
§ 28:7	—General magistrates
§ 28:8	—Guardian
§ 28:9	— —Limited guardian
§ 28:10	— —Plenary guardian
§ 28:11	—Ward
§ 28:12	Guardianship ethics
§ 28:13	—When guardianship is necessary
§ 28:14	Guardianship necessary—Danger to self
§ 28:15	—Financial danger
§ 28:16	—Wrongful fiduciaries or caregivers
§ 28:17	Ethics—Effect of guardianship on the ward
§ 28:18	—Impact on family
§ 28:19	—Attorney-client conflicts
§ 28:20	—Enrichment of heir
§ 28:21	—Guardian's motives

## B. ALTERNATIVES TO GUARDIANSHIP

—Attorney supervision over guardian's acts

§ 28:23 Weighing the alternatives to guardianship § 28:24 Alternatives—Living trusts § 28:25 —Supported Decisionmaking Agreement § 28:26 —Powers of attorney § 28:27 —Joint accounts § 28:28 —Health care surrogate § 28:29 —Geriatric care management § 28:30 -Intercession by family or friend —Representative payee § 28:31 § 28:32 —Community resources

### C. TYPES OF GUARDIANSHIPS

§ 28:33 Several types of guardians
§ 28:34 Representation by attorney
§ 28:35 Non-Elder Law guardianships
§ 28:36 Types of guardians—Natural guardians

§ 28:37	—Guardian ad litems for minors
§ 28:38	Guardians of minors
§ 28:39	Resident guardian
§ 28:40	Guardianships for physically and/or mentally incapacitated persons
§ 28:41	—Least restrictive alternative
§ 28:42	—When necessary
§ 28:43	If guardianship is necessary—Voluntary guardianship
§ 28:44	—Rights removed
§ 28:45	—Emergency
§ 28:46	Guardian of the person/guardian of the property
§ 28:47	Emergency temporary guardianship (ETG)
§ 28:48	—Requirement of imminent danger
§ 28:49	—Timing
§ 28:50	—Notice
§ 28:51	—Duration of authority
§ 28:52	Voluntary guardianship
§ 28:53	—Requirement of competence
§ 28:54	—Scope of authority
§ 28:55	—Duration of authority
§ 28:56	Plenary guardianship
§ 28:57	Limited guardianship
§ 28:58	Standby guardianship
§ 28:59	Preneed guardian
§ 28:60	—Formalities of execution
§ 28:61	—Recording the declaration
§ 28:62	—Effect of declaration
§ 28:63	—Appointment and assumption of duties
§ 28:64	Veteran's guardianship
-	

# D. EFFECT OF AN ADJUDICATION OF INCAPACITY ON AN INDIVIDUAL'S RIGHTS

§ 28:65 The nature of incapacity
§ 28:66 Incapacity—Removable rights
§ 28:67 —Delegable rights
§ 28:68 — —Advance directives for health care
§ 28:69 —Retained rights

## E. BEGINNING A GUARDIANSHIP CASE

§ 28:70 The usual start of a guardianship case
§ 28:71 Court-appointed attorney
§ 28:72 Existing client
§ 28:73 Persons in contact with elder

## § 28:74 The initial interview

# F. SELECTION AND QUALIFICATIONS OF A GUARDIAN

§ 28:75	Overall goal in the selection of a guardian
§ 28:76	Statutory qualifications and considerations
§ 28:77	Persons who may be appointed guardians
§ 28:78	Institutional guardians
§ 28:79	Educational requirements
§ 28:80	Background requirements
§ 28:81	Guardian—Disqualifications
§ 28:82	——Status disqualifications
§ 28:83	——Conflicts of interest
§ 28:84	Public guardian
§ 28:85	—Qualification to have public guardian appointed
§ 28:86	—Costs
§ 28:87	Guardian selection
§ 28:88	—Local guardian preferred
§ 28:89	—Cost
§ 28:90	—Relationship with attorney
§ 28:91	—Amateurs
§ 28:92	Professional guardians
§ 28:93	—Bond requirement
§ 28:94	—Disadvantages
§ 28:95	Multiple guardians

# G. PROCEDURE

§ 28:96	Filing the initial pleadings
§ 28:97	—Petition to determine incapacity
§ 28:98	—Plenary or limited
§ 28:99	Petition to determine incapacity—Persons with
	knowledge
§ 28:100	—Factual circumstances
§ 28:101	Order determining incapacity
§ 28:102	Petition for appointment of guardian
§ 28:103	—Property
§ 28:104	—Reasons for a particular guardian
§ 28:105	When to file the petition for the appointment of a guardian
000 100	
§ 28:106	Order appointing the guardian
§ 28:107	Letters of guardianship
§ 28:108	Petition for appointment of emergency temporary guardian
§ 28:109	Order appointing an emergency temporary guardian

§ 28:110	Application for appointment as guardian
§ 28:111	Guardian's oath
§ 28:112	Bond of guardian
§ 28:113	Filing the initial pleadings—Notice
§ 28:114	Notice—Content
§ 28:115	—Other service
§ 28:116	—Notice in voluntary guardianships
§ 28:117	—Notice in emergency temporary guardianships
§ 28:118	—Constructive service
§ 28:119	Petition for voluntary guardianship
§ 28:120	—Certificate of licensed physician
H. AT	TORNEY'S ROLE
§ 28:121	The appointment and role of attorney for the alleged incapacitated person
§ 28:122	Court-appointed attorney—Duties
§ 28:123	—Duration of representation
§ 28:124	Examining committee
§ 28:125	—Evidentiary significance
§ 28:126	—Composition
§ 28:127	—Duty
§ 28:128	—Written report
§ 28:129	——Content
§ 28:130	—Attorney contact with committee members
§ 28:131	Live testimony of examining committee
§ 28:132	No guardianship if examining committee does not
	find incapacity
I. INC	APACITY HEARING
§ 28:133	Incapacity hearing
§ 28:134	—Attendance
§ 28:135	—Timing and length of hearing
§ 28:136	—Burden of proof and conduct of hearing
§ 28:137	—Informal proceeding
§ 28:138	—Petitioner's attorney's presentation
§ 28:139	—Court-appointed attorney's presentation
§ 28:140	—Court's role
§ 28:141	The contested incapacity hearing
§ 28:142	Advance notice of contest
§ 28:143	Who can contest
§ 28:144	Use of experts
§ 28:145	—Examining committee
§ 28:146	—Other experts
§ 28:147	Disclosure of experts
-	*

§ 28:148	Appointment of guardian hearing
§ 28:149	—Uncontested appointments
§ 28:150	—Contested appointments
§ 28:151	—Contesting but not proposing new guardian
§ 28:152	— —Evidence
§ 28:153	——Point of hearing
§ 28:154	——Resolution
§ 28:155	—Contesting and proposing new guardian
§ 28:156	——Professional
§ 28:157	— — Choice between guardians
§ 28:158	—Attorney's fees on petition that is denied
J. GU.	ARDIANSHIP ADMINISTRATION
§ 28:159	Administration of the ward's affairs and report the court

§ 28:159	Administration of the ward's affairs and reporting to
	the court
§ 28:160	Plans and reports
§ 28:161	—Initial guardianship report
§ 28:162	Initial guardianship plan
§ 28:163	—Annual information
§ 28:164	—Content
§ 28:165	Verified inventory
§ 28:166	—Records retention
§ 28:167	Annual guardianship report
§ 28:168	Annual guardianship plan
§ 28:169	Annual accounting
§ 28:170	Inventory of safety deposit boxes
§ 28:171	Designating a depository for the ward's assets
§ 28:172	—Bond or designated depository
§ 28:173	Prudent investor rule
§ 28:174	Delegation of investment functions
§ 28:175	Designating a depository for the ward's assets— Eligible depositories
§ 28:176	—Depository fees
§ 28:177	—Filing requirements
§ 28:178	—No penalty for early withdrawal of certificate
0	accounts
§ 28:179	Payments of ward's expenses
§ 28:180	—Regular expenses
§ 28:181	—Unanticipated or irregular expenses of the ward
§ 28:182	—Support of ward's dependents
§ 28:183	—Use of assets held jointly with a spouse or another
5	person
§ 28:184	Expenses and profits from real estate
§ 28:185	—Profits from intangible property

—Alienation of joint spousal assets § 28:186 —Joint bank accounts § 28:187 § 28:188 -Withdrawal of funds by co-owner § 28:189 —Withdrawal of funds by guardian § 28:190 Requesting authorization to act § 28:191 Authorization to act—Contracts § 28:192 —Ward as fiduciary or donee of a power § 28:193 —Repairs to buildings -Selling, mortgaging, or leasing § 28:194 § 28:195 —Use of joint assets § 28:196 —Purchasing real estate § 28:197 —Defending or bringing lawsuits —Settlement of claims § 28:198 § 28:199 —Insurance claims § 28:200 —Funeral expenses § 28:201 —Estate planning § 28:202 —Change of ward's residence § 28:203 —Delegation of investment authority § 28:204 —Medicaid planning § 28:205 ——Qualified income trust § 28:206 ——After acquired assets § 28:207 ——Special needs trust § 28:208 —Payments to spouse § 28:209 Restriction on guardian's personal liability

### K. TERMINATION OF GUARDIANSHIP

§ 28:210 Circumstances that will end the guardianship § 28:211 End of guardianship—Restoration to capacity § 28:212 ——Suggestion of capacity — Medical examination § 28:213 —Restoration hearing § 28:214 § 28:215 — Evidence --- Rights of ward § 28:216 —Order of restoration § 28:217 § 28:218 —New guardianship report § 28:219 -Resignation of guardian and appointment of successor § 28:220 — —Pleadings § 28:221 ———Resignation of guardian § 28:222 -Resignation and new appointment-Pleadings-Petition for discharge § 28:223 — —Final report § 28:224 — Notice and service — — Objections § 28:225

§ 28:226	— —Waiver
§ 28:227	— Petition and order for appointment of successor
	guardian
§ 28:228	———Receipt of successor guardian
§ 28:229	—Resignation of guardian and appointment of
	successor—Discharge of guardian
§ 28:230	—Removal of guardian
§ 28:231	—Reasons for removal
§ 28:232	—Accounting and surrender of property
§ 28:233	—Ward's change of domicile
§ 28:234	—Discharge when ward is missing
§ 28:235	—Discharge upon exhaustion of ward's funds
§ 28:236	—Discharge upon death of ward
§ 28:237	—Discharge of guardian named as personal
	representative
§ 28:238	—Disposition of unclaimed funds held by guardian—
	Probate proceeding
§ 28:239	——Deposit of unclaimed funds
§ 28:240	—Deposit of unclaimed funds—Posting or
	publication
§ 28:241	
§ 28:242	—Claiming funds on deposit
§ 28:243	—Guardian's retention of funds to pay costs
L. AT	TORNEY AND GUARDIAN FEES

§ 28:244 Careful recordkeeping § 28:245 Procedure for payment § 28:246 Time for payment § 28:247 —What is a reasonable fee § 28:248 Fees—Statutory criteria § 28:249 —Time and labor involved § 28:250 —Novelty and difficulty § 28:251 —Preclusion of other employment § 28:252 -Customary fee § 28:253 —Nature and value of ward's property § 28:254 -Statutory criteria-Results obtained § 28:255 —Time limits imposed by the circumstances § 28:256 —Relationship with ward § 28:257 -Experience, reputation, diligence and ability § 28:258 —Compensable services § 28:259 -Attorney as guardian § 28:260 —Limited guardianships § 28:261 —Family member guardians —Payment to errant guardian or attorney § 28:262

### FLORIDA ELDER LAW

§ 28:263	—Attorneys entitled to fee
§ 28:264	—Payment for representing the alleged
	incapacitated person or ward
§ 28:265	—Court-appointed attorneys
§ 28:266	— — Uncontested matters
§ 28:267	——Contested matters
§ 28:268	—Payment for representing the incapacitated ward
§ 28:269	—Fees for collecting fees
§ 28:270	—Attorney representing guardian on unauthorized
	acts

## M. CHECKLISTS

§ 28:271 Voluntary guardianship initial pleadings checklist § 28:272 Involuntary guardianship initial pleadings checklist

## N. FORMS

§ 28:273 Form of stand–alone preneed guardian designation
§ 28:274 Guardianship intake form
§ 28:275 Certificate of a licensed physician
§ 28:276 Itemized description of services

### **Table of Laws and Rules**

**Table of Cases** 

Index