

Table of Contents

Volume 1

PART A. BUSINESS TRANSACTIONS IN GENERAL

CHAPTER 1. PREPARATION OF CONTRACTS

- § 1:1 In general
- § 1:2 Test for essential elements of valid contract
- § 1:3 Provisions to consider
- § 1:4 Letters of intent
- § 1:5 Execution of contracts—In general
- § 1:6 —By agent
- § 1:7 —By partner
- § 1:8 —By corporation
- § 1:9 —By limited liability company
- § 1:10 —By limited liability partnership
- § 1:11 Acknowledgments
- § 1:12 Release provisions
- § 1:13 Checklist—General contract
- § 1:14 Tax considerations
- § 1:15 —Personal property as exempt from taxation
- § 1:16 —Local exemption of personal property
- § 1:17 —Importance of tax search; delinquent taxes

CHAPTER 2. BUYING OR SELLING A BUSINESS

- § 2:1 In general
- § 2:2 Preliminary investigation—In general
- § 2:3 —Corporate stock purchase
- § 2:4 —Corporate stock purchase of controlling shares
- § 2:5 Financial condition of business enterprise
- § 2:6 Appraisals of assets of business
- § 2:7 Earnings record
- § 2:8 Business operations
- § 2:9 Titles to real estate
- § 2:10 Lease
- § 2:11 Contractual commitments
- § 2:12 Inventory, machinery and equipment
- § 2:13 Patents, trademarks and copyrights
- § 2:14 Status of subsidiary companies
- § 2:15 Contract of sale
- § 2:16 Description of purchase
- § 2:17 Evidence of title

- § 2:18 Purchase price and payment
- § 2:19 Allocation of purchase price
- § 2:20 Security for payment of purchase price
- § 2:21 Representations and warranties
- § 2:22 —Stock purchase
- § 2:23 —Disclosures—Employment security tax liability
- § 2:24 Mechanics of closing
- § 2:25 Financial statements—Balance sheet
- § 2:26 Profit and loss statements
- § 2:27 Noncompetitive agreement
- § 2:28 Miscellaneous provisions
- § 2:29 Closing
- § 2:30 Checklist—Factors to consider in evaluating purchase or sale of business
- § 2:31 —Sale or purchase of business
- § 2:32 Tax considerations and checklist additions

CHAPTER 3. FORMING A PARTNERSHIP

- § 3:1 In general
- § 3:2 Importance of proper agreement
- § 3:3 Preliminary information to secure from prospective partners
- § 3:4 Federal tax incidence
- § 3:5 Contents of partnership agreement—In general
- § 3:6 —Name of partnership
- § 3:7 —Description of business
- § 3:8 —Capital contributions
- § 3:9 —Property contributions
- § 3:10 Division of profits and losses
- § 3:11 Keeping of books and annual accounts
- § 3:12 —Effect of death of partner
- § 3:13 —Prohibited acts
- § 3:14 Making disbursements
- § 3:15 Goodwill
- § 3:16 Advances, as loans or contributions
- § 3:17 Intellectual property
- § 3:18 Guaranties by one partner to another
- § 3:19 Certificate of partnership
- § 3:20 Registration under assumed name
- § 3:21 Limited partnership—Definition
- § 3:22 —Formation procedures
- § 3:23 Dissolution of partnership
- § 3:24 —Partnership dissolution agreement
- § 3:25 —Notice of dissolution of partnership

CHAPTER 4. SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE

- § 4:1 In general
- § 4:2 Transactions covered

TABLE OF CONTENTS

§ 4:3	—Other transactions considered secured
§ 4:4	Excluded transactions
§ 4:5	Conflict of laws
§ 4:6	Definitions
§ 4:7	Security interest definition
§ 4:8	Validity of security agreement—Law governing
§ 4:9	—Perfection requirements
§ 4:10	—Time of attachment
§ 4:11	—Powers given debtor
§ 4:12	Checklist—Matters to consider in drafting in security agreement
§ 4:13	—Matters to include
§ 4:14	Rights of parties to agreement—Generally
§ 4:15	—On assignment by seller of consumer goods
§ 4:16	—Buyer of consumer goods
§ 4:17	—Debtor’s right to statement
§ 4:18	Duty of secured party as to collateral
§ 4:19	Rights of third parties—Generally
§ 4:20	—To reach debtor’s interest
§ 4:21	—Torts
§ 4:22	Perfecting security interests—Effect
§ 4:23	—Generally
§ 4:24	—Mobile homes
§ 4:25	—Filing requirement
§ 4:26	—Bailments and documents
§ 4:27	—By taking possession
§ 4:28	—In proceeds of collateral
§ 4:29	—In property subject to statute
§ 4:30	Actions for failure to discover prior security interests
§ 4:31	Priority of unperfected security interest
§ 4:32	Conflicting security interests in same collateral
§ 4:33	—Purchase money security interest
§ 4:34	—Nonpurchase money security interests
§ 4:35	Statutory and common-law liens
§ 4:36	Fixtures
§ 4:37	Accessions and commingled or processed goods
§ 4:38	Filing—Necessity and time
§ 4:39	—What constitutes filing
§ 4:40	—Place
§ 4:41	—Financing statement requirements
§ 4:42	— —Amendment
§ 4:43	—Form for financing statement
§ 4:44	—In case of assignment
§ 4:45	Rights on default—In general
§ 4:46	—Right to possession
§ 4:47	—Collection rights
§ 4:48	—Right to dispose of collateral
§ 4:49	—Compulsory disposition of consumer goods

- § 4:50 —Acceptance of collateral in discharge of obligation
- § 4:51 —Debtor's right of redemption
- § 4:52 —Secured party's liability for failure to comply
- § 4:53 Termination statement
- § 4:54 Release of collateral
- § 4:55 Checklist—Security agreement

CHAPTER 5. PATENTS, COPYRIGHTS, TRADEMARKS AND UNFAIR COMPETITION

- § 5:1 In general
- § 5:2 Classification of industrial property grants
- § 5:3 —Computer technology
- § 5:4 Nature of patent grant
- § 5:5 Patent searches
- § 5:6 Official Gazette
- § 5:7 Patent applications
- § 5:8 —Drawings
- § 5:9 —Claims
- § 5:10 Assignments
- § 5:11 Licenses
- § 5:12 Patent rights—Employer and employee
- § 5:13 Patent litigation and arbitration
- § 5:14 —Sales responsibility
- § 5:15 —Defenses, generally
- § 5:16 — —Effect of license or other agreement on liability
- § 5:17 —Damages for infringement
- § 5:18 Priority of invention—Interferences
- § 5:19 Statutory bars
- § 5:20 Reissues, disclaimers, reexamination
- § 5:21 Design patents
- § 5:22 Foreign patents
- § 5:23 Copyrights—Generally
- § 5:24 —Berne convention
- § 5:25 —Owner's rights
- § 5:26 —Duration of copyright
- § 5:27 —Notice of copyright
- § 5:28 —Deposit and registration
- § 5:29 —Infringement and fair use
- § 5:30 —Rights of heirs
- § 5:31 Trademarks—Generally
- § 5:32 —Federal law
- § 5:33 —State law
- § 5:34 —Infringement
- § 5:35 Trade names
- § 5:36 Trade dress
- § 5:37 Trade secrets
- § 5:38 Unfair competition

TABLE OF CONTENTS

CHAPTER 6. LIMITED LIABILITY COMPANIES

- § 6:1 Introduction
- § 6:2 —Limited liability
- § 6:3 Advantages
- § 6:4 Formation and powers—Generally
- § 6:5 —Operating agreement
- § 6:6 —Articles of organization
- § 6:7 Filing fees
- § 6:8 —Name
- § 6:9 — —Reservation
- § 6:10 — —Transacting business under assumed name
- § 6:11 —Registered office and registered agent
- § 6:12 Formation and powers—Certificate of good standing; restoration upon loss of good standing status
- § 6:13 Filing fees—Amending articles of organization
- § 6:14 Membership and member rights
- § 6:15 —Voting
- § 6:16 Contributions
- § 6:17 Distributions
- § 6:18 Management
- § 6:19 Assignment of membership interest
- § 6:20 Withdrawal of member
- § 6:21 Derivative actions
- § 6:22 —Dismissal
- § 6:23 Dissolution
- § 6:24 Winding up
- § 6:25 —Procedure for barring claims
- § 6:26 —Distribution of assets
- § 6:27 Professional limited liability companies
- § 6:28 —Liability
- § 6:29 —Formation and reporting requirements
- § 6:30 Disqualification of member or manager
- § 6:31 Sale or transfer of membership interests

PART B. REAL ESTATE TRANSACTIONS

CHAPTER 7. REAL PROPERTY INTERESTS

I. IN GENERAL

- § 7:1 Nature of interests in real property, generally
- § 7:2 —What constitutes “real property;” fixtures distinguished
- § 7:3 —Personal property interests distinguished
- § 7:4 Effect of choice of ownership form
- § 7:5 Summer resort and park associations

II. FEE INTERESTS; CONCURRENT OWNERSHIP INTERESTS

- § 7:6 Fee simple absolute

- § 7:7 Fee estates held by more than one person; presumptions as to type of estate created
- § 7:8 —Tenancy in common
- § 7:9 —Joint tenancy
- § 7:10 — —Joint tenancy with right of survivorship
- § 7:11 —Tenancy by entireties

III. POSSESSORY OR LIEN INTERESTS

- § 7:12 Life estate
- § 7:13 Dower and homestead interests
- § 7:14 Land contract
- § 7:15 Mortgage; primary and secondary mortgage liens
- § 7:16 Leasehold interests
- § 7:17 Easements
- § 7:18 Licenses

IV. MANNER OF PERFECTION OF INTEREST IN REAL PROPERTY

- § 7:19 Written instruments, generally; deeds
- § 7:20 Mortgages
- § 7:21 Fixtures
- § 7:22 Mobile home title and security interest for mobile homes affixed to real property

CHAPTER 8. NEGOTIATING AND PERFORMING REAL PROPERTY CONTRACTS AND LAND CONTRACTS; CONDITIONAL PROVISIONS

I. IN GENERAL

- § 8:1 Objectives of parties to contract, generally
- § 8:2 Attorney's role

II. MATTERS PRELIMINARY AND INCIDENT TO CONTRACT

- § 8:3 Listing agreement with real estate agent or broker
- § 8:4 Seller disclosures; form
- § 8:5 Seller disclosures—Statutory form of disclosure
- § 8:6 Purchaser due diligence
- § 8:7 Tax considerations—School tax exemption
- § 8:8 —Agricultural exemptions from school taxes
- § 8:9 —Delinquent real property taxes; right of redemption
- § 8:10 —Federal income tax considerations

III. CONTRACT TERMS AND PROVISIONS

- § 8:11 Procedure, generally; involvement of counsel; use of the standard form realtor's contract

TABLE OF CONTENTS

- § 8:12 Seller's provisions
- § 8:13 Buyer's provisions—Checklist
- § 8:14 —Inspections
- § 8:15 — —Environmental audits
- § 8:16 —Title defects; title search; time within which defects must be removed or remedied
- § 8:17 —Obtaining of financing
- § 8:18 —Permits, approvals, zoning and use restrictions

IV. LAND CONTRACTS

- § 8:19 Generally
- § 8:20 Form, terms, and provisions
- § 8:21 —Land contract mortgages
- § 8:22 —Remedies upon default

CHAPTER 9. CLOSING REAL ESTATE TRANSACTIONS

- § 9:1 Generally
- § 9:2 Closing documents
- § 9:3 —Settlement statement; proration of taxes, fees, and charges
- § 9:4 Statutory short forms of warranty deed; quitclaim deed; mortgage

CHAPTER 10. MORTGAGES

I. IN GENERAL

- § 10:1 Nature and purpose, generally
- § 10:2 Drafting the mortgage—Required provisions
- § 10:3 —Suggested provisions
- § 10:4 Drafting the mortgage note
- § 10:5 Preparing for and closing mortgage loan
- § 10:6 —Requirements for recording
- § 10:7 Effects of defects in title on priority of mortgage lien
- § 10:8 Payment and discharge of mortgage
- § 10:9 Effect of default; foreclosure; deed in lieu of foreclosure

II. LAND CONTRACT MORTGAGES

- § 10:10 Generally
- § 10:11 Terms and provisions
- § 10:12 Perfection and priority

III. REAL ESTATE SETTLEMENT PROCEDURES ACT REQUIREMENTS

- § 10:13 Generally
- § 10:14 Required forms
- § 10:15 Prohibited actions

CHAPTER 11. LEASING REAL PROPERTY

I. PRELIMINARY CONSIDERATIONS

- § 11:1 Generally
- § 11:2 Title; authority to bind landlord or tenant
- § 11:3 —Zoning; use restrictions; variances
- § 11:4 Equipping the premises; smoke detectors and alarms

II. LEASE TERMS AND PROVISIONS

- § 11:5 Generally; description of leased property
- § 11:6 Dates and term; extension and renewal
- § 11:7 Parties
- § 11:8 Rent; payment terms
- § 11:9 Fitness, maintenance, and repairs—Residential property
- § 11:10 —Other property
- § 11:11 Additions, accessions, improvements, and fixtures
- § 11:12 Damage to, or destruction of, rental premises; condemnation
- § 11:13 Services to be provided, performed, or contracted; utilities
- § 11:14 Use by tenant/lessee; assignment and sublease
- § 11:15 Termination provisions, generally; pre-term termination of lease
- § 11:16 —Special rules affecting residential property leases
- § 11:17 Purchase option

III. DOCUMENTING, EXECUTING, AND RECORDING LEASE AGREEMENT

- § 11:18 Formal writing; statute of frauds
- § 11:19 Recording the lease agreement

CHAPTER 12. CONSTRUCTION CONTRACTS, LOANS, AND LIENS

I. PREPARING TO BUILD, IN GENERAL

- § 12:1 Generally
- § 12:2 Hiring architect
- § 12:3 Survey of property
- § 12:4 Hiring supervisors; general contractors
- § 12:5 Zoning and land planning issues
- § 12:6 —Review of Zoning Board Decisions
- § 12:7 Public financing of construction
- § 12:8 Obtaining construction bids

II. BUILDING OR CONSTRUCTION CONTRACTS

- § 12:9 Generally
- § 12:10 Necessary provisions

TABLE OF CONTENTS

III. CONSTRUCTION LIENS

- § 12:11 Generally
- § 12:12 When lien arises; services giving rise to lien
- § 12:13 Property subject to lien
- § 12:14 Amount of lien
- § 12:15 Procedure—Required notices
- § 12:16 —Waivers of lien
- § 12:17 —Claim of lien; enforcement action
- § 12:18 Discharge of lien
- § 12:19 Enforcement of lien
- § 12:20 —Satisfaction; priorities
- § 12:21 Homeowner construction lien recovery fund

PART C. FEDERAL TAX INCIDENCE: BUSINESS AND REAL ESTATE TRANSACTIONS; DIVORCE AND SEPARATE MAINTENANCE

CHAPTER 13. BUYING, OPERATION AND DISPOSITION OF REAL ESTATE—TAX INCIDENCE

- § 13:1 In general
- § 13:2 Real estate as capital asset
- § 13:3 —Holding period
- § 13:4 —“Basis” of real estate
- § 13:5 —Deductions limited by “at-risk” rules
- § 13:6 —Amount of gain or loss as taxable; when gain must be reported
- § 13:7 — —Dealers in realty; real estate “held primarily for sale;” subdivision
- § 13:8 Sale, transfer, or other disposition of real estate, generally
- § 13:9 —Time of completion of sale
- § 13:10 —Types of transfers; sale versus mortgage
- § 13:11 — —Sale versus lease; sale and leaseback
- § 13:12 — —Exchange of like property
- § 13:13 — —Installment sale
- § 13:14 Ownership form
- § 13:15 —“Mutual fund” real estate investment (REIT)
- § 13:16 Financing ownership, purchase, or improvement; deductibility of interest
- § 13:17 —Points
- § 13:18 —Investment interest limitation
- § 13:19 —Imputed interest
- § 13:20 —Discharge of “qualified real property business indebtedness”
- § 13:21 Operation of real estate—Distinction between capital and operating expenditures
- § 13:22 —Depreciation and obsolescence of property
- § 13:23 — —Effect of lease
- § 13:24 —Repairs and maintenance
- § 13:25 —Damage or destruction of business property, deduction

- § 13:26 —Limitation on deductions for “passive” losses
- § 13:27 Abandonment or demolition and removal of real estate
- § 13:28 Involuntary conversion
- § 13:29 Application of tax rules to personal residences
- § 13:30 —Deductibility of home office expenses
- § 13:31 —Rental or investment use of residence
- § 13:32 —Deductibility of mortgage interest

CHAPTER 14. LEASING OF REAL ESTATE—TAX INCIDENCE

- § 14:1 In general
- § 14:2 Payments by lessee, generally
- § 14:3 —Bonus payments
- § 14:4 —Deferred or prepaid rents
- § 14:5 —Security deposits
- § 14:6 —Expenses paid by lessee
- § 14:7 —Improvements by lessee
- § 14:8 —Payments for cancellation or renewal of lease
- § 14:9 —Expenses for restoring property
- § 14:10 Nature of lease, generally; lease versus sale
- § 14:11 —Sale and leaseback of real property
- § 14:12 Leasing between related taxpayers

CHAPTER 15. SELECTION OF BUSINESS ENTITY—TAX AND NONTAX FACTORS

- § 15:1 In general
- § 15:2 Nontax factors considered in choosing business form
- § 15:3 Tax factors considered in choosing business form
- § 15:4 Corporations—Regular or “C” corporation
- § 15:5 —“S” corporation
- § 15:6 —Professional service corporation
- § 15:7 Partnerships—General partnership
- § 15:8 —Limited liability partnership
- § 15:9 —Limited partnership
- § 15:10 Limited liability company
- § 15:11 Co-ownership
- § 15:12 Business trust
- § 15:13 Real estate investment trust
- § 15:14 Real estate mortgage investment company
- § 15:15 Sole practitioner; self-employed individuals

CHAPTER 16. BUYING AND SELLING A BUSINESS—TAX INCIDENCE

- § 16:1 In general
- § 16:2 Seller's considerations, generally
- § 16:3 Purchaser's considerations, generally

TABLE OF CONTENTS

- § 16:4 Classes of assets and expenses for tax purposes
- § 16:5 —Capital assets
- § 16:6 —Distinctions between capital and noncapital assets
- § 16:7 —Long and short-term capital gains or losses
- § 16:8 —Section 1231 assets
- § 16:9 —Goodwill
- § 16:10 —Covenant not to compete
- § 16:11 —Income to date of sale
- § 16:12 Allocation of values
- § 16:13 Installment sales
- § 16:14 Effect of sale or purchase of particular type of business entity—Sole proprietorship business
- § 16:15 —Partnership business
- § 16:16 —Corporation; sale of assets or stock; continuity
- § 16:17 — —Net operating loss carryover; availability to buyer; limitation on use

CHAPTER 17. PARTNERSHIP FORMATION, OPERATION AND DISSOLUTION—TAX INCIDENCE

- § 17:1 Entities treated as partnerships or subject to partnership taxation; who is “partner”
- § 17:2 —Family partnerships
- § 17:3 Partnership as “pass-through” entity for tax purposes
- § 17:4 Governing I.R.C. provisions; Subchapter K; election out of Subchapter K
- § 17:5 Formation; capital contributions by partners; recharacterization of contribution as sale
- § 17:6 —“Contribution” of services in exchange for capital interest
- § 17:7 —Organization and syndication fees
- § 17:8 —Basis of property and interests
- § 17:9 —Documentation
- § 17:10 Taxable years
- § 17:11 Operation; partnership computations
- § 17:12 —Distributive share to partners
- § 17:13 — —Distributive share of partnership losses
- § 17:14 —Guaranteed payments to partners
- § 17:15 —Transactions between partner and partnership
- § 17:16 —Distributions
- § 17:17 — —Basis of distributed property
- § 17:18 Collapsible partnerships
- § 17:19 Termination and dissolution
- § 17:20 —Sale of partnership interest
- § 17:21 —Death or withdrawal of partner
- § 17:22 —Closing partnership year
- § 17:23 Tax returns to be filed
- § 17:24 —Electing large partnerships
- § 17:25 Conversion of partnership to corporate form
- § 17:26 Publicly traded partnerships

CHAPTER 18. CORPORATE ORGANIZATION AND DISSOLUTION—TAX INCIDENCE

- § 18:1 Status of entity as corporation
- § 18:2 —Other corporate entities; personal holding company
- § 18:3 Organization of corporate structure—Use of multiple entities
- § 18:4 —Selection of fiscal year
- § 18:5 Capital structure
- § 18:6 —Preferred stock
- § 18:7 — —Valuation of preferred stock in “estate freeze” transfers
- § 18:8 —Debt in capital structure; “thin capitalization”
- § 18:9 Transfer of property to corporation for corporate stock
- § 18:10 —When taxable
- § 18:11 —Application to nonqualified preferred stock
- § 18:12 Leasing property to corporation by shareholders
- § 18:13 Corporate income, generally; tax rates
- § 18:14 —“Personal holding company” income
- § 18:15 —Election to be taxed under Subchapter S
- § 18:16 Deductions, generally
- § 18:17 —Executive compensation
- § 18:18 Unreasonable accumulations of earnings
- § 18:19 Dividends; consequences to corporation and shareholders, generally
- § 18:20 Redemption of stock; stock purchase agreements, generally
- § 18:21 —Safe-harbor rules
- § 18:22 —Redemption of deceased shareholder’s stock
- § 18:23 Sale of stock of one corporation to related corporation
- § 18:24 Liquidation of corporation, generally
- § 18:25 —Consequences to shareholders
- § 18:26 —Partial liquidation
- § 18:27 —Liquidation of subsidiary
- § 18:28 —Application to business acquisitions
- § 18:29 — —Section 338 election to treat stock purchase as asset purchase
- § 18:30 — —Section 338(h)(10) election to treat transaction as “consolidated group” transaction
- § 18:31 — —Section 336(e) election to treat transaction as asset distribution
- § 18:32 —Exclusion for gain on sale of “qualified small business stock”
- § 18:33 — —Special treatment of “small business companies”

CHAPTER 19. PATENTS, COPYRIGHTS AND TRADEMARKS—TAX INCIDENCE

- § 19:1 In general
- § 19:2 Patents as capital assets
- § 19:3 Sale or exchange of patent
- § 19:4 Sale of copyright
- § 19:5 Sale of trademark
- § 19:6 Depreciation and amortization—Patents
- § 19:7 —Copyrights

TABLE OF CONTENTS

- § 19:8 —Trademarks and trade names
- § 19:9 —Unpatented inventions and patent applications
- § 19:10 Research engineering and development costs
- § 19:11 License of patent
- § 19:12 —Sale with license back
- § 19:13 Employee's agreement to turn over invention to employer
- § 19:14 Royalty payments
- § 19:15 Valuation of patents

CHAPTER 20. DIVORCE, ALIMONY, PROPERTY SETTLEMENTS—TAX INCIDENCE

- § 20:1 Alimony and separate maintenance
- § 20:2 Cash payments required
- § 20:3 Designation of payment as nonalimony
- § 20:4 Spouses may not be members of same household
- § 20:5 Payments must terminate at recipient spouse's death
- § 20:6 Payments treated as child support
- § 20:7 "Front-loading" rules
- § 20:8 Dependency exemptions
- § 20:9 Dependent's income; attribution to parents
- § 20:10 Deduction for child's medical expenses
- § 20:11 Property transfers
- § 20:12 Community income of separated spouses
- § 20:13 Jointly operated business income; self-employment tax

PART D. CORPORATIONS

CHAPTER 21. CORPORATE ORGANIZATION

- § 21:1 In general
- § 21:2 The initial discussion—Motives
- § 21:3 —Cautions
- § 21:4 —Capitalization
- § 21:5 Preorganization agreement
- § 21:6 Reservation of corporate name—Necessity
- § 21:7 —Mechanics
- § 21:8 Articles of incorporation—Drafting generally
- § 21:9 —Corporate name
- § 21:10 — —Guidelines
- § 21:11 —Purposes and powers
- § 21:12 —Stock
- § 21:13 —Offices and agents
- § 21:14 —Incorporators
- § 21:15 —Arrangement or reorganization provision
- § 21:16 —Taking corporate action without meeting
- § 21:17 —Limiting director liability
- § 21:18 —Voting by shareholders

- § 21:19 Other optional provisions
- § 21:20 —Sample articles
- § 21:21 —Execution and filing
- § 21:22 —Fees
- § 21:23 De facto corporation and corporation by estoppel
- § 21:24 Agreements among shareholders
- § 21:25 First meeting of incorporators or shareholders—Generally
- § 21:26 —Preparation
- § 21:27 —Conduct of meeting
- § 21:28 First meeting of board of directors—Generally
- § 21:29 —Preparation
- § 21:30 —Conduct of meeting
- § 21:31 Bylaws—Generally
- § 21:32 —Sample bylaws
- § 21:33 Records
- § 21:34 Early stage venture investment corporations (ESVICs)

CHAPTER 22. CORPORATE OPERATION

- § 22:1 In general
- § 22:2 Immediately subsequent to formal organization—Securities acts
- § 22:3 —Bulk transfers
- § 22:4 Report—To shareholders
- § 22:5 —Annual to state
- § 22:6 Taxes
- § 22:7 Meetings—Generally
- § 22:8 —Notices and waiver of notices
- § 22:9 —Shareholders' annual—Place
- § 22:10 — —Calling
- § 22:11 — —Conduct of meeting
- § 22:12 — —Quorum, voting
- § 22:13 — —Motions and resolutions
- § 22:14 — —Minutes
- § 22:15 — —Waiving
- § 22:16 Shareholders' special
- § 22:17 —Board of directors'—Setting up
- § 22:18 — —Voting
- § 22:19 — —Action without
- § 22:20 Officers
- § 22:21 Directors—Generally
- § 22:22 —Liability
- § 22:23 —Indemnity
- § 22:24 —Life insurance
- § 22:25 Shareholders
- § 22:26 Amendment of articles
- § 22:27 Foreign corporations
- § 22:28 Corporate checkups
- § 22:29 Agents

TABLE OF CONTENTS

§ 22:30 Early stage venture investment corporations (ESVICs)

CHAPTER 23. CORPORATE FINANCE

- § 23:1 Capitalization
- § 23:2 Authorized securities—Classes and series, etc
- § 23:3 —Notes
- § 23:4 Stock issuance and transfer—Subscriptions
- § 23:5 —Consideration—Generally
- § 23:6 — —Memo to incorporators
- § 23:7 —Stock certificates
- § 23:8 —Rights, options or warrants for purchase of shares
- § 23:9 —Preemptive rights
- § 23:10 Blue sky laws—Generally
- § 23:11 —Objectives
- § 23:12 —Federal securities acts
- § 23:13 —What is a “security”?
- § 23:14 —What is an “offer”?—The statute
- § 23:15 — —The cases
- § 23:16 — —Script for nonoffer and nonsolicitation
- § 23:17 —Exempted securities
- § 23:18 —Exempted transactions
- § 23:19 — —Small offering exemption
- § 23:20 — —Uniform limited offering exemption
- § 23:21 —Registration—By notification
- § 23:22 — —By coordination
- § 23:23 — —By qualification
- § 23:24 —Small corporate offering registration
- § 23:25 —Penalties
- § 23:26 —Disclosure
- § 23:27 Dividends
- § 23:28 Redemption, repurchase and cancellation of shares
- § 23:29 Mergers and consolidations
- § 23:30 —Hostile takeover attempts
- § 23:31 —Control share acquisitions
- § 23:32 Sale of corporate assets
- § 23:33 Early stage venture investment corporations (ESVICs)
- § 23:34 Corporate tax credits and incentives
- § 23:35 Audit of financial records
- § 23:36 Insolvency

CHAPTER 24. CORPORATE DISSOLUTION

- § 24:1 In general
- § 24:2 Methods—By incorporators or directors
- § 24:3 —By the board and shareholders
- § 24:4 —By shareholder action
- § 24:5 —Automatic dissolution
- § 24:6 When dissolution occurs—Generally

- § 24:7 —Tax clearance
- § 24:8 Winding up—Continuation of business
- § 24:9 —Notice to creditors
- § 24:10 —Court supervision
- § 24:11 —Distribution of assets
- § 24:12 Reorganization
- § 24:13 Early stage venture investment corporations (ESVICs)

PART E. ESTATE PLANNING

CHAPTER 25. GENERAL PRINCIPLES OF ESTATE PLANNING

- § 25:1 Objectives of estate planning, generally
- § 25:2 Procedural aspects of preparing estate plans
- § 25:3 —Identifying potential beneficiaries and claimants
- § 25:4 —Identifying assets, income sources, and liabilities
- § 25:5 Expenses and costs associated with estate planning
- § 25:6 Estate planning tools
- § 25:7 —Disclaimers of property
- § 25:8 —Advance health care directives
- § 25:9 —Durable powers of attorney
- § 25:10 Statutory provisions, generally; EPIC
- § 25:11 Fiduciaries; duties generally
- § 25:12 Ethical considerations
- § 25:13 Periodic review

CHAPTER 26. WILLS; EFFECTS OF INTESTACY

I. IN GENERAL

- § 26:1 Definitions
- § 26:2 Estate planning objectives of wills, generally
- § 26:3 —Reduction of federal estate tax liability
- § 26:4 Researching probate matters

II. INTESTATE SUCCESSION AND ELECTIVE SHARES, IN GENERAL

- § 26:5 Intestate succession; effect of lack of will
- § 26:6 —Surviving spouse
- § 26:7 —Order of intestate succession after surviving spouse
- § 26:8 —After-born or after-adopted children
- § 26:9 —Alternate treatment of prior gifts in regard to intestate share; advancements
- § 26:10 Spousal elective share
- § 26:11 —Waiver of spousal elective rights

III. REQUISITES FOR VALID WILL

- § 26:12 Generally

TABLE OF CONTENTS

- § 26:13 Form
- § 26:14 —Alteration, modification, or revocation
- § 26:15 —Statutory form of will; notice
- § 26:16 Deposit with court

IV. PARTICULAR TYPES OF WILL PROVISIONS

- § 26:17 Generally
- § 26:18 Incorporating other documents
- § 26:19 Bequest of specific property
- § 26:20 —Effect of existing liens or encumbrances on devised property
- § 26:21 Using lifetime gifts to satisfy bequest
- § 26:22 Use of “triggering events”
- § 26:23 —Effect of prior death of devisee
- § 26:24 Devise to trust or trustee
- § 26:25 Devise of securities
- § 26:26 Powers of appointment; exercise
- § 26:27 “Alternative” bequests
- § 26:28 Disinheriting particular persons
- § 26:29 Residuary clause
- § 26:30 Governing law
- § 26:31 Appointment of fiduciaries; guardians; personal representatives
- § 26:32 Direction to pay debts, probate costs, or taxes
- § 26:33 Checklist for wills in estate planning
- § 26:34 Reciprocal will agreements

CHAPTER 27. LIFE INSURANCE ARRANGEMENTS

- § 27:1 Types of life insurance, generally
- § 27:2 Estate planning functions of life insurance
- § 27:3 Estate planning functions of life insurance—Reduction of tax liability; federal estate tax liability
- § 27:4 Counseling a client with regard to life insurance
- § 27:5 Structuring the insurance contract to meet the objective
- § 27:6 —Insurance purchased by insured, payable to insured’s estate
- § 27:7 —Insurance purchased by insured, payable to named beneficiaries
- § 27:8 —Insurance purchased by insured, payable to trust
- § 27:9 —Insurance purchased by family member, payable to family member
- § 27:10 —Insurance purchased by corporation, insuring life of stockholder or employee; insurance purchased by qualified pension and profit-sharing plan
- § 27:11 —Insurance purchased by partner, officer, or shareholder, insuring life of other partner, officer, or shareholder
- § 27:12 —Life insurance and annuity combinations
- § 27:13 Payment options
- § 27:14 Insurance as collateral; insurance debts
- § 27:15 Gift of life insurance
- § 27:16 Assignment of life insurance policy
- § 27:17 Exchange of life insurance policies

CHAPTER 28. GIFTS

- § 28:1 Estate planning objectives of gifts, generally
- § 28:2 —Reduction of federal estate tax liability
- § 28:3 Elements of making gifts
- § 28:4 Form of gift
- § 28:5 Selecting subject matter of gift
- § 28:6 Valuation of gift
- § 28:7 Potential problem areas of gifts
- § 28:8 Consequence of making gift, generally; basis of property transferred
- § 28:9 —On estate—Estate expenses; using lifetime gifts in lieu of bequests
- § 28:10 Gift of future interest

CHAPTER 29. BUSINESS PURCHASE ARRANGEMENTS

- § 29:1 Estate planning objectives
- § 29:2 Validity of agreement
- § 29:3 Terms and provisions
- § 29:4 —Parties
- § 29:5 —Purchase price; manner of payment; security for payment
- § 29:6 —Use of option
- § 29:7 Manner of funding purchase price; use of life insurance
- § 29:8 —Other sources of funds
- § 29:9 Tax issues
- § 29:10 Advising the client; ethical considerations; periodic review

CHAPTER 30. TRUST ARRANGEMENTS

- § 30:1 Estate planning objectives of trusts
- § 30:2 Elements of valid trust
- § 30:3 Sources of trust corpus
- § 30:4 —Tax consequence of transfer of property to trust
- § 30:5 Identifying beneficiaries; spouses; charities
- § 30:6 Use of single or multiple trusts
- § 30:7 Selection of trustee; powers
- § 30:8 Choice between revocable and irrevocable trust
- § 30:9 Distribution of income or principal
- § 30:10 —Tax consequences relating to trust principal or income
- § 30:11 — —Distributions of real or personal property
- § 30:12 — —Qualifying trust for marital deduction
- § 30:13 Administration of trust property; effect of settlor's control
- § 30:14 Termination of trust; disposition of undistributed income
- § 30:15 Alienation of interest in trust; spendthrift clause

CHAPTER 31. FEDERAL AND STATE PLANNING

- § 31:1 Generally
- § 31:2 Federal estate tax
- § 31:3 —Relation to gift tax; unified credit
- § 31:4 Gross estate

TABLE OF CONTENTS

§ 31:5	—Valuation
§ 31:6	Deductions
§ 31:7	—Marital deduction
§ 31:8	Other federal taxes; income taxes; generation skipping transfer tax
§ 31:9	Checklist of additional federal tax provisions affecting estates
§ 31:10	State tax provisions
§ 31:11	Overview of Medicare changes under Deficit Reduction Act of 2005
§ 31:12	—Income requirements
§ 31:13	—Resource requirements—Transfer of assets—Look-back period
§ 31:14	—Married institutionalized client
§ 31:15	—Resource requirements—Medicaid planning
§ 31:16	— — —Minimizing estate recovery
§ 31:17	—Long term care provisions
§ 31:18	ERISA Considerations

PART F. ADMINISTRATION OF ESTATES

CHAPTER 32. PROBATE COURTS AND PRACTICE

§ 32:1	Probate courts—In general
§ 32:2	Probate court districts
§ 32:3	Probate judges
§ 32:4	Probate courts—Jurisdiction—Generally
§ 32:5	— —Relation to other courts
§ 32:6	—Venue—Generally
§ 32:7	— —Change of venue
§ 32:8	Court rules
§ 32:9	Official forms
§ 32:10	Probate practice generally
§ 32:11	Attorney fees
§ 32:12	Checklist—Information on decedent's estate
§ 32:13	Compromises, settlements and voluntary agreements
§ 32:14	Form of action
§ 32:15	Funeral arrangements and disposition of decedent's body, generally
§ 32:16	Appearances—Attorneys
§ 32:17	Notices
§ 32:18	—Notice of hearing in estate litigation and other matters—Generally
§ 32:19	—Instruments to be served
§ 32:20	—Who may serve
§ 32:21	—Service—Manner
§ 32:22	— —Method
§ 32:23	— —On petitioner
§ 32:24	— —On parties represented by attorney or otherwise
§ 32:25	— —On beneficiaries of future interests
§ 32:26	— —By publication
§ 32:27	— —Time of service
§ 32:28	—Proof of service

- § 32:29 —Waiver and consent
- § 32:30 Papers and pleadings—Generally
- § 32:31 —Form of papers
- § 32:32 —Contents of petitions
- § 32:33 —Proposed orders
- § 32:34 —Signing and authentication
- § 32:35 —Amending or supplementing
- § 32:36 —Filing
- § 32:37 — —Filing fees
- § 32:38 — —Motion and service fees
- § 32:39 Additional petitions and objections to pending matters
- § 32:40 Action by fiduciary in contested matter
- § 32:41 Parties—Representation generally
- § 32:42 — —Guardian ad litem
- § 32:43 —Death of fiduciary or moving party
- § 32:44 —Interested parties—Officers and representatives
- § 32:45 — —Specific proceedings
- § 32:46 Discovery
- § 32:47 Pretrial proceedings
- § 32:48 Mediation
- § 32:49 Jury trials
- § 32:50 Evidence—Generally
- § 32:51 —Proof of wills by deposition
- § 32:52 Judgments and orders—Generally
- § 32:53 —Costs
- § 32:54 —Rehearings and modifications
- § 32:55 Appeals—Generally
- § 32:56 —To court of appeals
- § 32:57 —To circuit court
- § 32:58 —Stay of proceedings

CHAPTER 33. PROBATE AND CONTEST OF WILL

- § 33:1 Introduction
- § 33:2 Object of probate proceedings
- § 33:3 Proper petitioners
- § 33:4 Jurisdiction and venue
- § 33:5 Petition for commencement of proceedings
- § 33:6 Time, place and notice of hearing
- § 33:7 —Form of notice to foreign consul
- § 33:8 Prima facie establishment of will—Requirements for valid will
- § 33:9 —Execution, attestation and self-proving of will
- § 33:10 —Form of proof as reduced to writing
- § 33:11 Orders granting or denying probate
- § 33:12 Certificate of probate and court records
- § 33:13 Objections to probate and will contests—Generally
- § 33:14 Proper contestants
- § 33:15 —Burden of proof

TABLE OF CONTENTS

§ 33:16 Negligent drafting

CHAPTER 34. PERSONAL REPRESENTATIVES

- § 34:1 Introduction
- § 34:2 Proper applicants
- § 34:3 Eligibility for and right to appointment—Generally
- § 34:4 —Foreign personal representatives
- § 34:5 —Eligibility of nonresidents
- § 34:6 Jurisdiction and venue
- § 34:7 Petition or application
- § 34:8 Notice of application
- § 34:9 Hearing and issues on application
- § 34:10 Order of appointment
- § 34:11 Bond—Requirements generally
- § 34:12 —Adequacy of sureties and approval of bond
- § 34:13 —Refusal or neglect to give bond
- § 34:14 Letters of authority—Generally
- § 34:15 —Form of certificate of authority
- § 34:16 Resignation
- § 34:17 Removal from office
- § 34:18 Death or incapacity of personal representative
- § 34:19 Discharge and termination of authority
- § 34:20 Reopening administration after discharge of personal representative
- § 34:21 Status and functions of representatives generally
- § 34:22 Rights and powers of representatives
- § 34:23 Representation by attorney—Conflict of interest
- § 34:24 Duties—Generally
- § 34:25 —Sustaining or defeating will
- § 34:26 Liability of representative—Generally
- § 34:27 —Investments
- § 34:28 —Prudent investor rule
- § 34:29 Restraint of personal representative
- § 34:30 Compensation and reimbursement of representative—Generally
- § 34:31 —Attorneys' fees
- § 34:32 —Forfeiture or loss of rights
- § 34:33 Actions by and against representative—Generally
- § 34:34 —Proceedings relating to automobile insurance
- § 34:35 —Wrongful death actions
- § 34:36 —Real property actions
- § 34:37 —Garnishment or attachment
- § 34:38 —Setting aside fraudulent conveyances
- § 34:39 —Time to sue
- § 34:40 —Compromise or settlement of litigation
- § 34:41 —Judgment against representative
- § 34:42 Special kinds of representatives—Special personal representative
- § 34:43 — —Form of petition for appointment
- § 34:44 —Public administrators

- § 34:45 —Special and successor personal representatives
- § 34:46 —Informal personal representatives
- § 34:47 Small estates
- § 34:48 Missing persons
- § 34:49 Persons apparently killed in accident or disaster

CHAPTER 35. INFORMAL PROBATE ADMINISTRATION

- § 35:1 Introduction
- § 35:2 Commencement of informal probate—Application
- § 35:3 —Determination of grant or denial of informal probate
- § 35:4 —Order for informal probate
- § 35:5 —Appointment of personal representative
- § 35:6 —Bond of informal personal representative
- § 35:7 —Letters of administration
- § 35:8 —Notice of appointment
- § 35:9 Powers and duties of representative—Generally
- § 35:10 —Prudent investor rule
- § 35:11 Restraint of personal representative
- § 35:12 —Specifically—Control of assets
- § 35:13 — —Real property
- § 35:14 — —Environmental hazards or concerns
- § 35:15 — —Leases
- § 35:16 — —Stocks and other securities
- § 35:17 — —Obligations owed to or from estate
- § 35:18 — —Businesses
- § 35:19 — —Payment of fees and taxes
- § 35:20 — — —Supervised review of fees
- § 35:21 — —Distribution
- § 35:22 — —Employment of advisors
- § 35:23 —Standard of care
- § 35:24 —Breach of duty and liability
- § 35:25 —Successors
- § 35:26 —Special personal representatives
- § 35:27 Restraint of personal representative
- § 35:28 Limitation of actions against representative and estate
- § 35:29 Informal probate procedures—Filing of papers
- § 35:30 —Inventory
- § 35:31 —Publication of notice of presentment of claims
- § 35:32 —Payment of claims generally
- § 35:33 —Claims barred against estate
- § 35:34 —Spouse's election
- § 35:35 Summary procedure in small estates—Generally
- § 35:36 —Determination of charges
- § 35:37 —Payment of claims
- § 35:38 —Closing statements
- § 35:39 Court supervision—Petition
- § 35:40 —Action pending hearing

TABLE OF CONTENTS

- § 35:41 —Order
- § 35:42 Judicial guidance in informal probate proceedings
- § 35:43 Closing informal administration—Generally
- § 35:44 —Closing statement
- § 35:45 —Certificate of completion
- § 35:46 —Continuing pendency
- § 35:47 Reopening proceeding

CHAPTER 36. FORMAL TESTACY PROCEEDINGS

- § 36:1 Commencement of proceedings
- § 36:2 Objections to informal probate
- § 36:3 Petition
- § 36:4 Proof of execution and intent
- § 36:5 Burden of proof
- § 36:6 —Testamentary capacity
- § 36:7 —Undue influence
- § 36:8 Order granting or denying probate
- § 36:9 Subsequent probate of will
- § 36:10 Missing persons
- § 36:11 Vacation or modification of orders
- § 36:12 Requests to court

CHAPTER 37. ESTATE ADMINISTRATION

- § 37:1 Introduction
- § 37:2 Assets of estate—Generally
- § 37:3 —Right to assets
- § 37:4 — —Between husband and wife
- § 37:5 — —Presumptions and evidence
- § 37:6 —Discovery proceedings
- § 37:7 —Inventory of assets
- § 37:8 —Valuation of assets
- § 37:9 —Sale of personal property
- § 37:10 Claims against decedents—Debts and obligations of estate
- § 37:11 —Expense of last illness or funeral
- § 37:12 —Alimony and support
- § 37:13 —Pretermitted spouses
- § 37:14 —Claims for reimbursement, contribution, on guaranty or for indemnity
- § 37:15 —Claims due personal representative
- § 37:16 —Defenses against claims
- § 37:17 —Offsets against claims
- § 37:18 —Presentment of and hearing on claims
- § 37:19 —Necessity of presentment
- § 37:20 —Effect of filing claim
- § 37:21 —Notice to creditors of time to present claims
- § 37:22 —Tardy claims
- § 37:23 —Barring claims not presented in time
- § 37:24 —Presentment of claims

- § 37:25 —Hearing on claims
- § 37:26 —Issues and evidence
- § 37:27 —Order of allowance or disallowance
- § 37:28 —Contingent and immature claims
- § 37:29 —Secured claims
- § 37:30 —Equitable remedies with respect to claims or obligations of decedent
- § 37:31 —Property and assets subject to debts or obligations
- § 37:32 —Priorities in payment
- § 37:33 —Payment of claims
- § 37:34 — —Out-of-state claims
- § 37:35 Rights of surviving spouse and minor children—Dower generally
- § 37:36 — —Widow's alternative dower rights before assignment
- § 37:37 —Homestead exemption and related rights
- § 37:38 Sale, mortgage or leasing of decedent's real estate—Generally
- § 37:39 —Grounds or reasons
- § 37:40 —Order in which sold
- § 37:41 —Terms and conditions of sale
- § 37:42 —Construction and effect of will provisions
- § 37:43 —Mortgages
- § 37:44 —Leases
- § 37:45 Land contracts
- § 37:46 Accounting by personal representative—Generally
- § 37:47 —Where to account
- § 37:48 —Who must account
- § 37:49 —When to account
- § 37:50 —What to account for
- § 37:51 —Account, objections, hearings, allowance
- § 37:52 —Termination of appointment and closing
- § 37:53 Determination of heirship
- § 37:54 Determination of survivorship
- § 37:55 Descent and distribution on intestacy

CHAPTER 38. GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

- § 38:1 Introduction
- § 38:2 Governing statutes and rules
- § 38:3 Fees
- § 38:4 —Ancillary and limited guardianship proceedings; fees
- § 38:5 Jurisdiction and venue
- § 38:6 Temporary guardians
- § 38:7 Protective orders; appointment of special conservator
- § 38:8 Eligibility for appointment
- § 38:9 Legally incapacitated persons; protected adults; developmentally disabled persons—Generally
- § 38:10 —Finding of impairments warranting appointment of guardian or conservator
- § 38:11 —Petition, report and preliminary order pending appointment—Generally
- § 38:12 — —Form of order pending hearing on appointment of conservator

TABLE OF CONTENTS

§ 38:13	—Notice of hearing
§ 38:14	— —Waiver of notice
§ 38:15	—Appointment of guardian ad litem, physician and visitor
§ 38:16	—Hearing
§ 38:17	—Order appointing guardian and/or conservator
§ 38:18	—Priority for appointment as guardian or conservator
§ 38:19	Minors—Generally
§ 38:20	—Proper applicants
§ 38:21	—Petition and notice of hearing
§ 38:22	—Hearing on petition and lawyer-guardian ad litem
§ 38:23	—Who may or should be appointed
§ 38:24	—Nomination by minor
§ 38:25	Limited guardianship
§ 38:26	Bond of conservator
§ 38:27	Testamentary guardians
§ 38:28	Inventory and discovery proceedings
§ 38:29	Letters of authority
§ 38:30	Resignations, removals and vacancies
§ 38:31	Powers and duties of guardians and conservators—Generally
§ 38:32	—Control over person of ward
§ 38:33	—Investment and depositing of funds
§ 38:34	—Liabilities
§ 38:35	Powers, duties and liabilities of conservator with regard to environmental concerns or hazards
§ 38:36	Report of guardian
§ 38:37	Actions by and against wards and protected persons
§ 38:38	Debts and claims
§ 38:39	—Support and maintenance
§ 38:40	Expenses of guardianship and conservatorship
§ 38:41	Accounting by guardian and conservator
§ 38:42	Judicial review of guardianship
§ 38:43	Termination of guardianship or conservatorship
§ 38:44	—On petition of parent or parents
§ 38:45	Sale, mortgaging or leasing of ward's real estate
§ 38:46	—Manner of making sale
§ 38:47	Durable powers of attorney

CHAPTER 39. HEALTH CARE DECISIONS

§ 39:1	Designation of patient advocate in general
§ 39:2	Validity of previous health care power of attorney or living will
§ 39:3	—Additional living wills
§ 39:4	Formalities of designation
§ 39:5	Witnesses to execution
§ 39:6	Terms of designation; requirement of acceptance
§ 39:7	Advocate rights, responsibilities, and limitations
§ 39:8	Conditions for exercise of authority
§ 39:9	Revocation or suspension of designation

- § 39:10 Duty and liability of health care provider
- § 39:11 Proceedings on designation of patient advocate

PART G. CREDITORS' RIGHTS AND ACTIONS

CHAPTER 40. COLLECTION METHODS GENERALLY

- § 40:1 Introduction
- § 40:2 Collection practice as field
- § 40:3 Associations
- § 40:4 Fees
- § 40:5 Collection attorneys' contracts
- § 40:6 Claims forwarded for collection
- § 40:7 Schedule of recommended rates on forwarded claims
- § 40:8 Minimum fee schedules
- § 40:9 Client relations
- § 40:10 Office practice—In general
- § 40:11 —Acknowledgment
- § 40:12 —Office indices and files
- § 40:13 —Demand letter
- § 40:14 —Some intermediate steps
- § 40:15 —Debtor conference
- § 40:16 —File analysis
- § 40:17 Hazards in collection efforts
- § 40:18 Actions generally
- § 40:19 —On open account or account stated
- § 40:20 Case evaluation
- § 40:21 Special rules aiding creditors
- § 40:22 Special rules aiding debtors
- § 40:23 Attorneys' liens

CHAPTER 41. RECOVERY OF PERSONAL PROPERTY

- § 41:1 Introduction
- § 41:2 Summary repossession—Fuentes
- § 41:3 —Shaffer
- § 41:4 Jurisdiction
- § 41:5 Venue
- § 41:6 Conditions of relief
- § 41:7 Self-help
- § 41:8 Claim and delivery procedure—Generally
- § 41:9 —Pleading and joinder—Complaints generally
- § 41:10 — —Action based on security agreement
- § 41:11 — —Answers
- § 41:12 —Motion for possession pending final judgment—Form
- § 41:13 — —Ex parte order; service
- § 41:14 — —Hearing
- § 41:15 — —Adjournments

TABLE OF CONTENTS

- § 41:16 — —Order for custody pending final judgment
- § 41:17 — —Seizure by sheriff or court officer
- § 41:18 —Trial
- § 41:19 —Judgment and costs
- § 41:20 Claim and delivery procedure—Execution

CHAPTER 42. ATTACHMENT

- § 42:1 Introduction
- § 42:2 Constitutional jurisdiction
- § 42:3 Power to issue
- § 42:4 Venue
- § 42:5 Rules governing
- § 42:6 Availability of writ—Generally
- § 42:7 —Contract action
- § 42:8 —Tort action
- § 42:9 —Action on foreign judgment
- § 42:10 Issuance of writ and order
- § 42:11 Execution of writ
- § 42:12 Procedures regarding orders for seizure of property
- § 42:13 Defense and dissolution
- § 42:14 Satisfaction of judgment

CHAPTER 43. GARNISHMENT

I. IN GENERAL

- § 43:1 Introduction
- § 43:2 Restrictions—Case law
- § 43:3 —Statutes
- § 43:4 Constitutional jurisdiction
- § 43:5 Power to issue
- § 43:6 Conditions on issuance
- § 43:7 Venue
- § 43:8 Court rules
- § 43:9 Garnishment against state

II. GARNISHMENT AFTER JUDGMENT

- § 43:10 In general
- § 43:11 Forms
- § 43:12 Request and issuance
- § 43:13 Writ of garnishment—Generally
- § 43:14 —Service
- § 43:15 Garnishee—Liability
- § 43:16 —Disclosure
- § 43:17 —Withholding
- § 43:18 Payment and dissolution
- § 43:19 Objections

- § 43:20 —Steps after disclosure—Generally
- § 43:21 Determination of garnishee's liability
- § 43:22 Installment and periodic payments
- § 43:23 Judgment and execution
- § 43:24 Appeals
- § 43:25 Receivership
- § 43:26 Costs and fees
- § 43:27 Failure to disclose; defaults; contempt
- § 43:28 Judicial discretion

III. GARNISHMENT BEFORE JUDGMENT

- § 43:29 In general
- § 43:30 Availability
- § 43:31 Request for garnishment
- § 43:32 Writ of garnishment—Generally
- § 43:33 —Service
- § 43:34 Garnishee liability
- § 43:35 —Disclosure
- § 43:36 Payment or deposit in court
- § 43:37 Objections and dissolution
- § 43:38 —Proceedings after judgment
- § 43:39 Costs and fees; defaults; contempt; judicial discretion

CHAPTER 44. EXECUTIONS

I. IN DISTRICT COURTS

- § 44:1 Executions in district courts generally
- § 44:2 Service, levy and sale

II. IN CIRCUIT COURTS

- § 44:3 Executions in circuit courts generally
- § 44:4 Writ of execution
- § 44:5 Property subject to execution—Personalty
- § 44:6 —Realty
- § 44:7 Exemptions and exclusions—When execution cannot issue
- § 44:8 —Persons whose property exempt
- § 44:9 —Exempt property
- § 44:10 Levy
- § 44:11 Execution sales
- § 44:12 Costs of execution

CHAPTER 45. SUPPLEMENTARY PROCEEDINGS

- § 45:1 Introduction
- § 45:2 Relief obtainable
- § 45:3 Procedure in general

TABLE OF CONTENTS

- § 45:4 Ordering installment payments
- § 45:5 Discovery of assets
- § 45:6 Restraining transfer of property
- § 45:7 Trying title to debt or property
- § 45:8 Fraudulent or voidable transfers
- § 45:9 Receivers

CHAPTER 46. CIVIL ARREST

- § 46:1 Introduction
- § 46:2 Prerequisites and grounds
- § 46:3 Obtaining warrant
- § 46:4 Hearing and discharge or commitment
- § 46:5 Other aspects

CHAPTER 47. NONBANKRUPTCY APPROACHES

I. IN GENERAL

- § 47:1 Introduction

II. ASSIGNMENTS FOR BENEFIT OF CREDITORS

- § 47:2 Assignments for benefit of creditors in general
- § 47:3 Requirements for validity
- § 47:4 Powers of assignee
- § 47:5 Sale of property
- § 47:6 Proof of claims
- § 47:7 Contest of claims
- § 47:8 Circuit court jurisdiction and powers
- § 47:9 Winding up
- § 47:10 Fraud or failure in assignment

III. TRUST MORTGAGES

- § 47:11 Trust mortgages

IV. DEBT POOLING ARRANGEMENTS

- § 47:12 Debt pooling arrangements

V. INSTALLMENT JUDGMENTS

- § 47:13 Installment judgments

VI. WAGE EARNER'S RECEIVERSHIP

- § 47:14 Wage earner's receivership

CHAPTER 48. REGULATION OF COLLECTIONS PRACTICES

I. INTRODUCTION

§ 48:1 In general

II. COLLECTION AGENCIES

§ 48:2 In general

III. REGULATED PERSONS

§ 48:3 In general

§ 48:4 Prohibited acts

§ 48:5 Disclosure of identity

§ 48:6 Remedies and penalties—Attorney general

§ 48:7 —Private actions

IV. CREDIT SERVICES ORGANIZATIONS

§ 48:8 In general

§ 48:9 Regulated persons

§ 48:10 Prohibited acts

§ 48:11 Remedies and penalties

V. FEDERAL REGULATION OF CREDIT

§ 48:12 In general

§ 48:13 Truth in Lending Act

§ 48:14 Fair Credit Billing Act

§ 48:15 Consumer personal property leases

§ 48:16 Fair Credit Reporting Act

§ 48:17 Equal Credit Opportunity Act

VI. FEDERAL REGULATION OF COLLECTIONS

§ 48:18 In general

§ 48:19 Restrictions on garnishment

VII. FAIR DEBT COLLECTION PRACTICES ACT

§ 48:20 In general

§ 48:21 Acquiring information

§ 48:22 Communications with consumer

§ 48:23 Harassment or abuse

§ 48:24 False or misleading representation

§ 48:25 Unfair practices

§ 48:26 Disputed debts

§ 48:27 Legal actions by debt collectors

TABLE OF CONTENTS

- § 48:28 Civil liability
- § 48:29 Relation to state laws

PART H. BANKRUPTCY

CHAPTER 49. BANKRUPTCY COURT STRUCTURE AND JURISDICTION

- § 49:1 Bankruptcy statutes, in general
- § 49:2 —Overview of statutory provisions
- § 49:3 —Overview of classifications of bankruptcies
- § 49:4 —Transition to BAPCPA
- § 49:5 —Trustees
- § 49:6 Bankruptcy court structure and personnel—Generally
- § 49:7 —Bankruptcy judges—Generally
- § 49:8 — —Powers
- § 49:9 —Time and place of holding court
- § 49:10 —Rules of procedure—Background
- § 49:11 — —The 1983 rules
- § 49:12 Jurisdiction of bankruptcy court—Generally
- § 49:13 —“Core” jurisdiction
- § 49:14 —Removal of claims related to bankruptcy cases
- § 49:15 Venue—Cases under Title 11
- § 49:16 —Cases arising under, arising in or related to
- § 49:17 —Cases ancillary to foreign proceedings
- § 49:18 —Change of venue
- § 49:19 —Ancillary proceedings
- § 49:20 Procedure—Generally
- § 49:21 —Process and notice
- § 49:22 —Time
- § 49:23 —Forms
- § 49:24 —Appearances and signing
- § 49:25 —Motions and contested matters
- § 49:26 —Examination
- § 49:27 Jury trials in bankruptcy court—Generally
- § 49:28 —Demand and waiver
- § 49:29 Public access to papers—Trade secrets; identity theft risks
- § 49:30 —Confidentiality of information regarding minors
- § 49:31 Settlement; arbitration
- § 49:32 Contempt proceedings
- § 49:33 Entry of judgment and notice thereof
- § 49:34 Relief from judgment or order
- § 49:35 Appeals from bankruptcy judges—Generally

CHAPTER 50. OBTAINING RELIEF

- § 50:1 Introduction
- § 50:2 Who may be a debtor

- § 50:3 —BAPCPA requirements, generally
- § 50:4 —BAPCPA requirement of credit counseling
- § 50:5 Who may be a debtor-BAPCPA requirement of credit counseling—Who may perform counseling; format of providing
- § 50:6 Who may be a debtor—Exceptions to BAPCPA's credit counseling requirements; temporary waivers; debtor's incapacity
- § 50:7 Preparation of documents by paid preparers other than attorneys
- § 50:8 —Prohibition against giving legal advice
- § 50:9 —Collecting fees; declaration; maximum amounts; disallowance of improper fees
- § 50:10 —Penalties
- § 50:11 Debt relief agencies and bankruptcy assistance—Definitions
- § 50:12 —Contracts for services; advertising
- § 50:13 —Notices and disclosures
- § 50:14 —Restrictions on debt relief agencies
- § 50:15 Conference with client—Generally
- § 50:16 —Criminal statutes applicable
- § 50:17 —Debtor's duties—Under BAPCPA
- § 50:18 — —Pre-BAPCPA
- § 50:19 Conference with debtor—Post-BAPCPA
- § 50:20 Conference with client—Exemptions
- § 50:21 —Exceptions to discharge
- § 50:22 —Effect of discharge
- § 50:23 —Protection against discrimination
- § 50:24 —Fees
- § 50:25 Exemptions—Generally
- § 50:26 —Exceptions to exemptions
- § 50:27 —Federal alternative exemptions
- § 50:28 —BAPCPA limitations—IRAs
- § 50:29 — —Homestead and other exemption limitations
- § 50:30 —State and other exemptions—Generally
- § 50:31 — —Michigan exemptions
- § 50:32 —Waiver of exemptions
- § 50:33 —On avoidance of liens and transfers—Generally
- § 50:34 — —Liens
- § 50:35 — —Transfers
- § 50:36 Redemption
- § 50:37 Documents involved in voluntary bankruptcy—Generally
- § 50:38 —Debtor's petition
- § 50:39 —Statement of affairs—In general—Committee Note to 1995 Amendments
- § 50:40 — —Preparation
- § 50:41 —Schedules in bankruptcy—In general
- § 50:42 —Executing and filing the petition
- § 50:43 —Statement of executory contracts
- § 50:44 —Debtor reporting requirements; small business debtors
- § 50:45 Effect of filing petition—Generally
- § 50:46 —Stay effect
- § 50:47 — —Limitations on scope of stay, generally

TABLE OF CONTENTS

- § 50:48 — —Limitations on scope of stay effected by BAPCPA
- § 50:49 — —Limitations imposed by BAPCPA regarding small business debtors
- § 50:50 — —Discouraging bad faith repeat filings
- § 50:51 — —Curbing abusive filings
- § 50:52 — —Termination of automatic stay
- § 50:53 — —On leased property, or with regard to personal property of the debtor securing a claim
- § 50:54 — —Appointment of patient care ombudsman where debtor is a health care business
- § 50:55 Creditors' meetings—Generally
- § 50:56 — —Notice and hearing provisions, generally; appearances
- § 50:57 — —First meeting
- § 50:58 Intervention
- § 50:59 Dismissal of case—Generally
- § 50:60 — —Under Chapter 7
- § 50:61 — —Awards against debtor's attorneys; against moving party
- § 50:62 — —Effect of dismissal
- § 50:63 Conversion to another chapter
- § 50:64 Involuntary bankruptcy—Generally
- § 50:65 — —Parties
- § 50:66 — —Pleading and notices
- § 50:67 — —Notice by electronic transmission
- § 50:68 — —Bond
- § 50:69 — —Estate in interim
- § 50:70 — —Default or trial
- § 50:71 — —Expungement of records

CHAPTER 51. BANKRUPTCY ESTATE

- § 51:1 Creation of estate
- § 51:2 Trustee's duties—Generally
- § 51:3 Property of estate—Generally
- § 51:4 — —Powers and commercial leases
- § 51:5 — —Restrictions on transfers
- § 51:6 — —Secondary mortgage market
- § 51:7 Turnover of property to estate—Generally
- § 51:8 — —By a custodian
- § 51:9 — —Trustee's avoiding powers
- § 51:10 Administration of estate—Generally
- § 51:11 — —Protection of others—Generally
- § 51:12 — —Use, sale or lease of property
- § 51:13 — —Appointment of consumer privacy ombudsman
- § 51:14 — —Obtaining credit
- § 51:15 — —Utility service
- § 51:16 — —Executory contracts and unexpired leases—Generally
- § 51:17 — —BAPCPA provisions
- § 51:18 — —Clauses not binding on trustee
- § 51:19 — —Effect of rejection

- § 51:20 Protection of intellectual property
- § 51:21 Abandonment of property of estate
- § 51:22 Protection of trade secrets, etc
- § 51:23 Defenses of the estate

CHAPTER 52. TRUSTEE'S AVOIDING POWERS

- § 52:1 Introduction
- § 52:2 Limitations on avoiding powers
- § 52:3 Liability of transferee of avoided transfer
- § 52:4 Automatic preservation of avoided transfer
- § 52:5 Extension of time for trustee
- § 52:6 Trustee as lien creditor or as successor—Strong arm clause
- § 52:7 —To rights of actual unsecured creditor
- § 52:8 Statutory liens—Generally
- § 52:9 Preferences—Generally
- § 52:10 —Trustee's avoiding powers—Exceptions and limitations
- § 52:11 —Determining when transfer is made
- § 52:12 —Presumption of insolvency
- § 52:13 Fraudulent transfers and obligations—Generally
- § 52:14 Multiple or punitive damages; penalties—Generally
- § 52:15 Postpetition transactions—Generally
- § 52:16 Security interest in after-acquired property—Generally

CHAPTER 53. CLAIMS AND DISTRIBUTION

- § 53:1 Filing of proofs of claims or interests
- § 53:2 Allowance of claims or interests; objections
- § 53:3 Allowance of claims or interests—Estimates
- § 53:4 —Disallowance
- § 53:5 —Time as of which determination of claim is made
- § 53:6 Reconsideration of claim
- § 53:7 —Reducing claim
- § 53:8 Administrative expenses
- § 53:9 —Expenses not allowable
- § 53:10 Sharing of compensation
- § 53:11 Determining tax liability
- § 53:12 Determining secured status
- § 53:13 Priorities, generally
- § 53:14 —BAPCPA's new first priority for domestic support obligations
- § 53:15 —Second through tenth priorities (pre-BAPCPA first through ninth priorities)
- § 53:16 Effect of improper distribution
- § 53:17 Effect where claim is by codebtors; subrogation
- § 53:18 Subordination
- § 53:19 Disposition of remaining property
- § 53:20 Distribution—Order of payments
- § 53:21 —Pro rata within categories
- § 53:22 —Segregated community property
- § 53:23 Closing the case

CHAPTER 54. DISCHARGE AND DISCHARGEABILITY

- § 54:1 Discharge generally
- § 54:2 Bars to discharge
- § 54:3 —Acts of debtor to transfer, remove, destroy, mutilate, or conceal property
- § 54:4 —Failure to provide information or providing false information
- § 54:5 —Prior discharge
- § 54:6 Objecting to discharge; examination of debtor's conduct
- § 54:7 Hearing to grant or deny discharge
- § 54:8 Revocation of discharge; grounds
- § 54:9 Effect of discharge
- § 54:10 —Injunctive effect; entitlement to injunctions during reorganization
- § 54:11 —Injunctive effect—Impact on creditors' actions
- § 54:12 Waiver of discharge
- § 54:13 —Mandated disclosures
- § 54:14 — —Mandated form of agreement
- § 54:15 — —Mandated form of attorney certification; declaration; motion; order
- § 54:16 —Effect of agreement; presumption of undue hardship; rebuttal; hearing
- § 54:17 Exceptions to discharge

CHAPTER 55. SPECIAL PROBLEMS

- § 55:1 Attorney fees—Generally
- § 55:2 —Attorney for debtor—Disclosure
- § 55:3 — —Application
- § 55:4 — —Allowance
- § 55:5 — —Fee splitting
- § 55:6 —Attorney for trustee—Authorization
- § 55:7 — —Review of compensation
- § 55:8 — —Award of compensation
- § 55:9 — —Interim compensation
- § 55:10 Partnership problems—Generally
- § 55:11 —Fraudulent transfers
- § 55:12 —Collection from general partners—Generally
- § 55:13 — —Directly from partner by creditor
- § 55:14 Special tax provisions

CHAPTER 56. ADJUSTMENT OF DEBTS [CHAPTER 13 UNDER THE CODE]

- § 56:1 Debtor; rights and duties
- § 56:2 —Filing pre-petition tax returns
- § 56:3 Trustee—Appointment
- § 56:4 —Duties
- § 56:5 Claims; filing and allowance
- § 56:6 Property within Chapter 13 estate
- § 56:7 Conversion or dismissal
- § 56:8 —Request by party in interest or United States trustee
- § 56:9 —Exceptions

- § 56:10 Chapter 13 plan
- § 56:11 —Mandatory contents
- § 56:12 —Optional contents
- § 56:13 —Prohibited provisions
- § 56:14 Modification of plan before confirmation
- § 56:15 Confirmation hearing
- § 56:16 Confirmation of plan
- § 56:17 —Effect of objections
- § 56:18 Effect of confirmation
- § 56:19 —Payments; payments pending confirmation
- § 56:20 Modification after confirmation
- § 56:21 Revocation of confirmation
- § 56:22 Discharge
- § 56:23 —Denial
- § 56:24 —Revocation of discharge

CHAPTER 57. REORGANIZATION [CHAPTER 11 UNDER THE CODE]

- § 57:1 Introduction
- § 57:2 Investigation; intervention
- § 57:3 Stay of proceedings
- § 57:4 Creditors' committees
- § 57:5 Claims
- § 57:6 Conversion to another chapter
- § 57:7 Terminating or renegotiating labor contracts
- § 57:8 Retiree benefits
- § 57:9 Property of the estate
- § 57:10 Small business cases—Duties of trustee or debtor in possession

CHAPTER 58. ADJUSTMENT OF DEBTS OF FAMILY FARMER OR FAMILY FISHERMAN [CHAPTER 12 UNDER THE CODE]

- § 58:1 Introduction
- § 58:2 "Family farmer" defined
- § 58:3 "Family fisherman" defined
- § 58:4 Codebtor stay
- § 58:5 Trustee
- § 58:6 Rights and powers of debtors
- § 58:7 Adequate protection
- § 58:8 Power to sell collateral
- § 58:9 Property of the estate
- § 58:10 Conversion or dismissal
- § 58:11 The plan—Generally
- § 58:12 —Filing of plan
- § 58:13 —Contents of plan—Generally
- § 58:14 — —Payments to creditors

TABLE OF CONTENTS

- § 58:15 — —Modification before confirmation
- § 58:16 —Confirmation—Generally
- § 58:17 — —Confirmation hearing
- § 58:18 — —Payments
- § 58:19 — —Effect of confirmation
- § 58:20 —Discharge
- § 58:21 —Modification after confirmation
- § 58:22 —Revocation after confirmation
- § 58:23 Special tax provisions

CHAPTER 59. ADJUSTMENT OF DEBTS OF MUNICIPALITY [CHAPTER 9 UNDER THE CODE]

- § 59:1 Municipal bankruptcy—In general
- § 59:2 —Definitions
- § 59:3 —State power reserved
- § 59:4 —Court jurisdiction and powers
- § 59:5 Municipal bankruptcy administrative—Petition
- § 59:6 —Stay of claims enforcement
- § 59:7 —List of creditors
- § 59:8 —Avoiding powers
- § 59:9 —Recourse limitations
- § 59:10 —Liens on special revenues
- § 59:11 —Leases
- § 59:12 —Dismissal
- § 59:13 The plan—Filing
- § 59:14 —Modification
- § 59:15 —Confirmation

PART I. FAMILY LAW

CHAPTER 60. MARRIAGE

I. BACKGROUND AND DEFINITIONS

A. MARRIAGE DEFINED

- § 60:1 Generally
- § 60:2 Common law marriage

B. RECOGNITION BY STATE

- § 60:3 Generally
- § 60:4 Common law marriage
- § 60:5 Out-of-state marriages
- § 60:6 Same sex marriage
- § 60:7 Effect of marriage of minors
- § 60:8 Effect of marriage between parties incapable of contracting

§ 60:9 Marital status and discrimination in Michigan

II. CAPACITY AND PREREQUISITES

A. IN GENERAL

§ 60:10 Elements of valid marriage, generally

B. CAPACITY OF PERSONS TO MARRY

§ 60:11 Current marital status as single

§ 60:12 Sex of marriage partners

§ 60:13 Age of person to be married; requirement of consent of parents

§ 60:14 Relatives; consanguinity

C. CONSENT

§ 60:15 Consent, generally

§ 60:16 Fraud or force

D. LICENSE

1. In General

§ 60:17 Requirement, generally

§ 60:18 Where to obtain license

§ 60:19 Forms; affidavit; application

§ 60:20 Proof of age

§ 60:21 —Parental consent for persons under 18

§ 60:22 Counselling affirmation

§ 60:23 Fees for license

§ 60:24 Issuance of license; transmittal as public record

§ 60:25 —Time restrictions

§ 60:26 Failure to issue license

§ 60:27 Nondisclosure of social security number

2. Non-Public or “Secret” License

§ 60:28 Generally

§ 60:29 Application process

III. SOLEMNIZATION; CIVIL CEREMONY

§ 60:30 Requirement, generally

§ 60:31 Who may solemnize

§ 60:32 Duties of person solemnizing marriage

§ 60:33 —Penalty for violating

§ 60:34 Fees to solemnize marriage

§ 60:35 Service, ceremony or form of solemnization; required declarations; witnesses

§ 60:36 —Religious or societal ceremony

§ 60:37 Certificate of marriage; proof of marriage

§ 60:38 —Correction of errors

TABLE OF CONTENTS

- § 60:39 Effect of lack of authority to solemnize marriage
- § 60:40 Effect of lack of capacity to marry
- § 60:41 Non-public or “secret” marriages

IV. ACTIONS RELATING TO MARITAL RELATIONS (OTHER THAN DISSOLUTION)

- § 60:42 Proceeding to affirm marriage of doubtful validity
- § 60:43 “Heart balm” actions; types of claims preserved

CHAPTER 61. OVERVIEW OF EFFECT OF MARRIAGE ON PROPERTY RIGHTS OF SPOUSES

I. IN GENERAL

- § 61:1 Disability to contract abrogated

II. SEPARATE PROPERTY

A. IN GENERAL

- § 61:2 Property acquired before marriage
- § 61:3 Gifts, grants, inheritance, devise, or other acquisition of property
- § 61:4 Earnings

B. POWERS WITH REGARD TO SEPARATE PROPERTY

- § 61:5 Control, generally
- § 61:6 Transfer or conveyance

C. LIABILITIES WITH REGARD TO SEPARATE PROPERTY

- § 61:7 Personal liability; amenability of separate property to lien
- § 61:8 Spouse’s personal liability for other spouse’s or other person’s obligations

III. PROPERTY HELD AS TENANTS BY THE ENTIRETY

- § 61:9 Generally
- § 61:10 Encumbrancing property
- § 61:11 Sale of property subject to mortgage; tenancy by entireties in mortgage
- § 61:12 Effect of divorce
- § 61:13 Effect of void marriage; good faith partner
- § 61:14 Effect of judgment against one spouse
- § 61:15 Termination of tenancy by entirety

IV. JOINT OWNERSHIP OF PERSONAL PROPERTY

- § 61:16 Presumptions, generally

V. COMMUNITY PROPERTY, IN GENERAL

- § 61:17 What constitutes community property, generally; presumption as to status

- § 61:18 Control and disposition, generally
- § 61:19 Community property in estate of spouse
- § 61:20 Effect of divorce or separation

VI. EFFECT OF WRITTEN AGREEMENT

- § 61:21 Generally
- § 61:22 Surety, guarantee, pledge, or assignment
- § 61:23 Antenuptial agreements, generally
- § 61:24 Postnuptial agreements, generally
- § 61:25 Religious marriage contracts

CHAPTER 62. RIGHTS AND DUTIES AMONG PARENTS AND CHILDREN, IN GENERAL

I. SUPPORT

A. DUTY OF SUPPORT, IN GENERAL

- § 62:1 Statutory sources of support obligation, generally
- § 62:2 Parental rights and duties, generally
- § 62:3 Extension of duty to children over age 18
- § 62:4 Termination of duty, generally
- § 62:5 Enforcement of duty; commencement and prosecution of support action

B. NONCUSTODIAL PARENTS OF UNEMANCIPATED CHILDREN

1. Duty of Support, in General

- § 62:6 Duty of noncustodial parent—Right of married custodial parent to seek support
- § 62:7 —Right of unmarried custodial parent or guardian to seek support

2. Procedure

- § 62:8 Commencement of support proceedings; complaint; process
- § 62:9 Hearing; evidence; burden of proof
- § 62:10 Support order; enforcement
- § 62:11 —Effect of existing custody and parenting time dispute
- § 62:12 —Modification; supersession by judgment of divorce or separate maintenance

C. DETERMINING AMOUNT OF SUPPORT

- § 62:13 Generally; applicable statutes

D. ENFORCEMENT OF SUPPORT ORDERS UNDER THE SUPPORT AND PARENTING TIME ENFORCEMENT ACT

1. In General

- § 62:14 Applicability of statute
- § 62:15 What constitutes “support”
- § 62:16 What constitutes “support order”; mandatory provisions and notices

TABLE OF CONTENTS

§ 62:17 —Friend of the court cases

2. Particular Enforcement Remedies or Actions

§ 62:18 Retroactive modification; repayment plans

§ 62:19 Retroactive correction

§ 62:20 Income withholding

§ 62:21 Bond; guaranty; other security or lien

§ 62:22 —Perfection, enforcement, and termination of lien

§ 62:23 Automatic assignment of support to family independence agency

§ 62:24 Abatement of support; redirection of support

§ 62:25 Past due amounts; arrearages

§ 62:26 Relief from arrearages; amnesty; payment plans

§ 62:27 —Terms of payment plans

§ 62:28 Termination or suspension of support order

§ 62:29 Suspension of parent's licenses

§ 62:30 Civil contempt; bench warrant

§ 62:31 Enforcement of health care coverage order

E. MULTI-STATE SUPPORT ENFORCEMENT

§ 62:32 Income withholding, generally

§ 62:33 Other support enforcement remedies

F. SUPPORT OF CHILDREN BORN OUT OF WEDLOCK

§ 62:34 Expenses covered, generally

§ 62:35 Support order; effect of order of filiation

II. FAMILIAL RIGHTS AND DUTIES (OTHER THAN SUPPORT); CONSENT AND CONTROL, IN GENERAL

§ 62:36 Generally

§ 62:37 Rights to minor's services and earnings

§ 62:38 Blood donations by minor

§ 62:39 Abortion

III. EMANCIPATION OF MINOR CHILD

§ 62:40 Definitions

§ 62:41 When emancipation occurs; "temporary" periods of emancipation

§ 62:42 Procedure; petition; process; powers of court

§ 62:43 —Hearing and determination; order

§ 62:44 Appeal or setting aside emancipation order; when order is voidable

§ 62:45 Effect of emancipation; emancipated minor's rights and obligations

§ 62:46 —Effect on parental rights and obligations

IV. ESTABLISHING PARENTAL STATUS

§ 62:47 Surrogacy

§ 62:48 Acknowledgment of parentage or paternity

- § 62:49 Revocation of paternity
- § 62:50 Paternity or parentage actions
- § 62:51 —Trial; order of filiation; appeal
- § 62:52 —Motion to set aside determination of paternity
- § 62:53 —Determination that child born out of wedlock

V. MEDIATION AND DISPUTE RESOLUTION OF DOMESTIC RELATIONS MATTERS

- § 62:54 Resolution of domestic relations matters, generally; Friend of the Court Act
- § 62:55 Friend of the court duties
- § 62:56 Opening and closing of cases
- § 62:57 Use of referees
- § 62:58 Access to recommendations, reports, and evidence

VI. CONTRACT RIGHTS AND TORT IMMUNITIES AMONG FAMILY MEMBERS

- § 62:59 Transfers to minors, generally
- § 62:60 Transfers between parent and child; fraud and undue influence
- § 62:61 Interfamilial immunity; abolishment
- § 62:62 Domestic abuse and neglect

CHAPTER 63. DIVORCE, ANNULMENT, AND SEPARATION

I. IN GENERAL

- § 63:1 Validity of underlying marriage
- § 63:2 Necessity for action to dissolve void marriage
- § 63:3 Annulment
- § 63:4 —Marriage which is void or of doubtful validity
- § 63:5 —Parties; limitations
- § 63:6 —Grounds
- § 63:7 Status of children of marriage; effect of dissolution on status as legitimate

II. DIVORCE PROCEEDINGS

A. RESIDENCY REQUIREMENTS AS PREREQUISITE

- § 63:8 Residency requirements, generally
- § 63:9 Waiver of 10-day requirement
- § 63:10 Special requirements as to defendants
- § 63:11 Where cause arises out-of-state

B. PROCEDURE

- § 63:12 Generally
- § 63:13 Complaint; where to file; permissible allegations
- § 63:14 Answer; admissions and denials; counterclaim
- § 63:15 Evidence—Time restrictions on taking

TABLE OF CONTENTS

- § 63:16 Process
- § 63:17 Appearances
- § 63:18 Evidence generally; perpetuation of testimony
- § 63:19 Evidence, generally—Proof of cohabitation with non-resident defendant
- § 63:20 Interlocutory relief—Personal protection orders
- § 63:21 —Child support and custody
- § 63:22 Judgment; entry
- § 63:23 —Mandatory content of judgment
- § 63:24 —Other permissible content of judgment
- § 63:25 Recording of divorce decree

III. MARITAL ASSETS AND MARITAL ESTATE

A. IN GENERAL

- § 63:26 Mandating disclosure by parties
- § 63:27 Mandating certain tax filings
- § 63:28 Delivery or payment of property

B. PARTICULAR ASSETS OR PROPERTY

- § 63:29 Real estate or personal property
- § 63:30 Vested and contingent pension, annuity, or retirement benefits; accrued contributions
- § 63:31 Social security benefits
- § 63:32 Life insurance; endowment; annuity

IV. AWARD OF ALIMONY OR ACTION FOR SEPARATE MAINTENANCE

A. SEPARATE MAINTENANCE PROCEDURE

- § 63:33 Complaint; filing
- § 63:34 Answer; counterclaims
- § 63:35 Evidence; judgment
- § 63:36 Violation of award of support or maintenance

B. AWARD OF ALIMONY AND OTHER MONETARY AMOUNTS

- § 63:37 Generally
- § 63:38 Award as lien
- § 63:39 Determination to decline making award; factors; discretion
- § 63:40 Powers of court upon default in payment
- § 63:41 Modification of award
- § 63:42 Termination of award
- § 63:43 Recognition of out-of-state awards

V. AWARDS FROM THE MARITAL ESTATE

- § 63:44 Award for support and maintenance of former spouse or children of the marriage in that spouse's care

- § 63:45 Effect of recipient's receiving public assistance
- § 63:46 Reimbursement of county administrative costs
- § 63:47 Attorneys fees award

VI. CUSTODY AND SUPPORT ON ANNULMENT, DIVORCE, OR OTHER DISSOLUTION OF MARRIAGE

- § 63:48 Generally
- § 63:49 Jurisdiction of court
- § 63:50 Modification of child custody or support
- § 63:51 —Contempt; waiver by court

CHAPTER 64. CHILD CUSTODY AND PARENTING TIME

I. IN GENERAL

- § 64:1 Statutes applicable
- § 64:2 Construction of statutes
- § 64:3 Status of children as legitimate

II. CUSTODY DETERMINATIONS

A. IN GENERAL

1. Court's Rights and Duties, Generally

- § 64:4 Declaration of child's inherent rights
- § 64:5 Determining rights and duties as to custody and parenting time
- § 64:6 Hearing and trial, generally; calendar and assignment priority

2. Jurisdiction and Venue; Continuing Jurisdiction Over Child; Notice and Process

- § 64:7 Generally
- § 64:8 Guardian's custody petition
- § 64:9 Third person seeking custody

3. Prohibitions Against, or Bars to, Awards of Custody

- § 64:10 Parent convicted of crime resulting in conception of child
- § 64:11 Parent convicted of crime against child

B. BEST INTERESTS OF THE CHILD

- § 64:12 When best interests of child control resolution of dispute
- § 64:13 Presumptions favoring parents involving best interests
- § 64:14 Factors, generally
- § 64:15 Representation of child's best interests; appointment of guardian ad litem
- § 64:16 Report of guardian ad litem
- § 64:17 Compensation of guardian ad litem
- § 64:18 Evidence; admissibility

C. JOINT CUSTODY

- § 64:19 Definitions

TABLE OF CONTENTS

- § 64:20 When joint custody available; custody dispute between parents
- § 64:21 How raised
- § 64:22 Factors considered in making determination
- § 64:23 Award or denial, generally
- § 64:24 Effect of award; rights of custodial parent; resolution of dispute

D. THIRD PARTY CUSTODY

- § 64:25 Prerequisites; when action available
- § 64:26 Pleadings

E. SCOPE OF AWARD

- § 64:27 Generally
- § 64:28 Modification or amendment of prior judgment or order

III. PARENTING TIME DETERMINATIONS

A. IN GENERAL

- § 64:29 Best interests of child as governing; presumptions
- § 64:30 Statutory bars to parenting time; conviction of criminal sexual conduct
- § 64:31 Statutory bars to parenting time; the Hague Convention on the Civil Aspects of International Child Abduction
- § 64:32 Factors affecting frequency, duration, and type of parenting time
- § 64:33 Scope and nature of award
- § 64:34 —Effect of stipulation or agreement
- § 64:35 Effect of award of parenting time
- § 64:36 Temporary and interim orders; ex parte requests

B. GRANDPARENTING TIME

- § 64:37 When available
- § 64:38 How action commenced; motion or complaint; content of pleadings
- § 64:39 Hearing; evidentiary presumptions
- § 64:40 —Best interests of child
- § 64:41 —Mediation referral
- § 64:42 Scope of order
- § 64:43 Modification or termination of order

IV. EFFECT OF CUSTODY OR PARENTING TIME ORDER

- § 64:44 Access to information regarding child
- § 64:45 Child's legal residence; changing residence

V. ENFORCEMENT OF CUSTODY OR PARENTING TIME ORDER

- § 64:46 Violations, generally; alleging violation
- § 64:47 Response to violation
- § 64:48 —Makeup time
- § 64:49 —Joint meetings

§ 64:50 —Civil contempt proceedings

CHAPTER 65. ADOPTION

I. IN GENERAL

- § 65:1 Statutes, generally; policy; construction
- § 65:2 Recognition of foreign adoptions
- § 65:3 Priority granted to proceedings; adjournment
- § 65:4 Prohibition against payment of fees relating to adoption
- § 65:5 —Allowable fees
- § 65:6 Who may act to place children
- § 65:7 Representation of parties by counsel

II. PLACEMENT OF CHILD WITH ADOPTIVE PARENTS

A. TYPES OF PLACEMENTS; WHO MAY PLACE CHILD FOR ADOPTION

- § 65:8 Private, direct, placement
- § 65:9 —Providing pre-placement information
- § 65:10 Formal placement; conversion of temporary placement to formal placement
- § 65:11 Agency placement
- § 65:12 —Upon parent's or guardian's authorization
- § 65:13 Court placement

B. PREREQUISITES TO PLACEMENTS

- § 65:14 Disclosures regarding child
- § 65:15 Release of child for adoption
- § 65:16 Termination of parental rights
- § 65:17 Termination of parental rights for step-parent adoption
- § 65:18 Verified accounting of payments; verified counsel statements
- § 65:19 Preplacement assessment
- § 65:20 Prerequisites to temporary placement
- § 65:21 —Statement transferring physical custody
- § 65:22 —Placement and dispositional reports
- § 65:23 Effect of failure of disposition within time for report or investigation

C. FAILURE OF TIMELY DISPOSITION; AWARD OF CUSTODY OR RETURN OF CHILD

- § 65:24 Who may petition
- § 65:25 Interested parties to petition
- § 65:26 Hearing and determination on custody; power of court with regard to disposition
- § 65:27 Effect of temporary placement

III. ADOPTION PROCEDURE

- § 65:28 Purposes for which adoption may be had; name change; inheritance

TABLE OF CONTENTS

§ 65:29	Who may be adopted
§ 65:30	Who may adopt; who must file petition; prohibitions against placement or adoption
§ 65:31	Other interested parties
§ 65:32	—Related proceedings
§ 65:33	Petition; where to file
§ 65:34	—Contents of petition; attachments; verified statements
§ 65:35	Supporting documentation; filing requirements
§ 65:36	Pre-hearing notices and disclosures
§ 65:37	Adoption hearing
§ 65:38	Denial of adoption
§ 65:39	Adoption order; extension of 6-month period
§ 65:40	Adoption order—Conditions, such as pending appeal, which delay issuance of order
§ 65:41	Effect of adoption
§ 65:42	Rehearing; appeal; appellate jurisdiction
§ 65:43	Rescission petition

IV. POST-ADOPTION ISSUES

§ 65:44	Central adoption registry
§ 65:45	Public information

CHAPTER 66. JUVENILE JUSTICE AND CHILD PROTECTION: AN OVERVIEW

I. INTRODUCTION

§ 66:1	Statutory overview
--------	--------------------

II. JUVENILE JUSTICE

A. IN GENERAL

§ 66:2	Applicable statutes, generally
--------	--------------------------------

B. OVERVIEW OF PROSECUTION OF JUVENILE

§ 66:3	Generally
§ 66:4	Extradition of juveniles
§ 66:5	When juvenile may be tried as adult
§ 66:6	—Probable cause hearing
§ 66:7	—Effect of designation
§ 66:8	Attendance by parent or guardian at hearings
§ 66:9	Ability of juvenile court to issue orders relative to parents or guardians
§ 66:10	Disposition; sentencing as an adult
§ 66:11	Juvenile fingerprints and arrest cards

C. EVIDENCE AND DISCOVERY

§ 66:12	Evidentiary protections accorded juvenile victims
---------	---

§ 66:13 Dying declarations by juveniles as admissible evidence

III. CHILD PROTECTION

A. IN GENERAL

§ 66:14 Applicable statutes, generally

§ 66:15 Crimes against minors, generally

B. JUVENILE PROCEEDINGS

§ 66:16 Juvenile's behavior as basis for jurisdiction, generally

§ 66:17 Parent's behavior as basis for jurisdiction, generally

§ 66:18 Procedure, generally

§ 66:19 Investigation; examination of child; hearing

§ 66:20 Disposition

§ 66:21 —Non-incarcerative; supervisory dispositions

§ 66:22 —Commitment or placement

§ 66:23 —Provision of services

§ 66:24 —Protective orders

§ 66:25 Civil fines and assessments

§ 66:26 Restitution

§ 66:27 Costs of court proceedings

C. ABUSE AND NEGLECT OF MINOR

§ 66:28 Definitions

§ 66:29 Reporting of suspected abuse; mandated reporting agencies; content of report

§ 66:30 To whom report must be made

§ 66:31 Processing of report; distinctions between persons responsible for child's care and others; confidentiality

§ 66:32 —Release of "specified information"

§ 66:33 Investigation

§ 66:34 —Interview or examination of child

§ 66:35 Determination and mandated actions or responses

§ 66:36 Petitions for authorization by court

§ 66:37 Consequences of making false reports

D. TERMINATION OF PARENTAL RIGHTS

§ 66:38 Prerequisites to termination petition, generally

§ 66:39 Who may petition for termination

§ 66:40 Effect of filing petition; parenting time

§ 66:41 Placement of children with relatives

§ 66:42 Notice

§ 66:43 Right to counsel in termination proceedings

§ 66:44 Hearing; termination order; custody and visitation

§ 66:45 Grounds for termination—Desertion

§ 66:46 —Physical injury or sexual abuse

§ 66:47 —Prior adjudication

TABLE OF CONTENTS

- § 66:48 —Child in guardianship
- § 66:49 —Other inability to parent child; nonsupport; conviction or imprisonment
- § 66:50 The Indian Child Welfare Act (ICWA)
- § 66:51 The Safe Delivery of Newborns Act

CHAPTER 67. PROTECTION AND GUARDIANSHIP OF MINORS AND LEGALLY INCAPACITATED PERSONS

I. IN GENERAL

- § 67:1 Overview
- § 67:2 Conservatorship of property distinguished
- § 67:3 Durable power of attorney; designation of patient advocate

II. GUARDIANSHIP OF MINOR

A. STATUTORY OVERVIEW

- § 67:4 Manner of appointment; duration and termination

B. PARENTAL APPOINTMENT

- § 67:5 Appointment by parent; triggering event; acceptance
- § 67:6 Objection to appointment

C. COURT APPOINTMENT

1. In General

- § 67:7 Who may petition
- § 67:8 Investigation
- § 67:9 Circumstances justifying appointment
- § 67:10 Who may be appointed as guardian
- § 67:11 Disposition of petition; appointment or dismissal
- § 67:12 Effect of parental appointment
- § 67:13 Effect of court appointment; scope of court's powers

2. Limited Guardianship

- § 67:14 Who may petition
- § 67:15 Prerequisites
- § 67:16 —Limited guardianship placement plan
- § 67:17 Review and disposition; modification
- § 67:18 Duration of appointment; powers and duties of limited guardian

3. Practice and Procedure

- § 67:19 Venue
- § 67:20 Notice
- § 67:21 Appointment of lawyer-guardian ad litem

D. ACCEPTANCE OF APPOINTMENT; POWERS AND DUTIES OF GUARDIAN

- § 67:22 Acceptance; effect

§ 67:23 Powers and duties

E. DURATION; TERMINATION; REVIEW OF STATUS

§ 67:24 Automatic or mandatory termination

§ 67:25 Mandatory and discretionary guardianship review

§ 67:26 —Consequences of review; continuance or termination

§ 67:27 Petition to terminate guardianship

§ 67:28 —Resolution by termination or continuation of guardianship

§ 67:29 Petition to remove guardian

III. GUARDIANSHIP OF INCAPACITATED PERSON

A. APPOINTMENT BY RELATIVE

§ 67:30 Parental appointment, generally

§ 67:31 Spousal appointment, generally

§ 67:32 When appointment effective

§ 67:33 Effect of written objections

B. BY PETITION

§ 67:34 Who may petition

§ 67:35 Notice to prospective petitioner

§ 67:36 Petition; representation by counsel; appointment of guardian ad litem

§ 67:37 Jurisdiction and venue

§ 67:38 Physical or mental health examination; reports

§ 67:39 Hearing and disposition

§ 67:40 —Choosing person to serve as guardian

§ 67:41 Emergency appointment of court as guardian or temporary guardian

C. GUARDIANSHIP

§ 67:42 Guardian's acceptance; duration and termination of guardianship

§ 67:43 Court review; timing

§ 67:44 Rights and responsibilities of guardian

§ 67:45 —Limitations on powers

§ 67:46 Resignation and removal; modification; termination

§ 67:47 Temporary guardians

CHAPTER 68. NAME CHANGE

§ 68:1 Generally

§ 68:2 Petition for name change; jurisdiction; residency requirements, generally

§ 68:3 —Petition by minor

§ 68:4 Reason for change; fraudulent intent; effect of criminal record

§ 68:5 Supporting documents—Consent to change by minor or parent

§ 68:6 Hearing and publication

§ 68:7 —Confidential proceedings

§ 68:8 Entry and scope of name change order

PART J. FEDERAL PRACTICE AND PROCEDURE

CHAPTER 69. JURISDICTION, VENUE AND CHOICE OF LAW

- § 69:1 Introduction
- § 69:2 Admission to practice
- § 69:3 Governing law—Generally
- § 69:4 —Rules
- § 69:5 — —Local rules
- § 69:6 Jurisdiction over subject matter—Generally
- § 69:7 —Federal question
- § 69:8 —Diversity jurisdiction
- § 69:9 —Amount in controversy
- § 69:10 Attacks on jurisdiction
- § 69:11 “Consent” to subject matter jurisdiction
- § 69:12 Ancillary and pendent jurisdiction—Generally
- § 69:13 —Ancillary jurisdiction
- § 69:14 —Pendent jurisdiction
- § 69:15 Jurisdiction over person
- § 69:16 Removal to federal court—Generally
- § 69:17 —Procedure
- § 69:18 —Remand to state court
- § 69:19 Venue—Generally
- § 69:20 —Improper venue
- § 69:21 —Change of venue
- § 69:22 —Forum non conveniens
- § 69:23 Disqualification of judges
- § 69:24 Three-judge district courts

CHAPTER 70. COMMENCEMENT OF THE ACTION AND PROCESS

- § 70:1 Introduction
- § 70:2 Summons; form and issuance
- § 70:3 —Person to serve summons
- § 70:4 Proof of service
- § 70:5 Time limit for service
- § 70:6 Waiver of service
- § 70:7 Service of process—Generally
- § 70:8 —Personal
- § 70:9 — —On infants and incompetent persons
- § 70:10 — —On corporations and associations
- § 70:11 —On United States
- § 70:12 —On state or municipal corporation
- § 70:13 —In foreign and international litigation
- § 70:14 —Party in foreign country
- § 70:15 —On foreign government

- § 70:16 —Territorial limits of effective service
- § 70:17 —By state procedure
- § 70:18 —By mail
- § 70:19 Amendment of summons
- § 70:20 Seizure of property where service not feasible
- § 70:21 Attacks on process

CHAPTER 71. PLEADING IN FEDERAL COURTS

- § 71:1 Federal pleading in general
- § 71:2 Pleadings allowed
- § 71:3 Form of pleadings and other papers
- § 71:4 Complaint—Generally
- § 71:5 —Caption
- § 71:6 —Pleading special matters
- § 71:7 —Signature and verification; sanctions
- § 71:8 Copies of pleadings
- § 71:9 Jury demand
- § 71:10 Joinder of claims
- § 71:11 Answer—Generally
- § 71:12 —Time
- § 71:13 —Preparation
- § 71:14 —Affirmative defenses
- § 71:15 —Waiver of certain defenses
- § 71:16 Counterclaims
- § 71:17 Cross-claims
- § 71:18 Third-party pleadings
- § 71:19 Replies
- § 71:20 Serving and filing pleadings and other papers
- § 71:21 Time computation
- § 71:22 Attacks on pleadings
- § 71:23 Amendments—Generally
- § 71:24 —To conform to proofs
- § 71:25 —Relation back of amendments
- § 71:26 Supplemental pleadings

CHAPTER 72. MOTION PRACTICE

- § 72:1 Motions—Generally
- § 72:2 —In limine and the like
- § 72:3 —Form
- § 72:4 —Time
- § 72:5 —Scheduling
- § 72:6 —Motion briefs
- § 72:7 —Hearing
- § 72:8 —Continuances
- § 72:9 Motions attacking pleadings—Generally
- § 72:10 —Consolidation of motions
- § 72:11 —Failure to state claim

TABLE OF CONTENTS

§ 72:12	—For judgment on pleadings
§ 72:13	—For more definite statement
§ 72:14	—To strike
§ 72:15	Motion for summary judgment—Generally
§ 72:16	—Purpose—Raising affirmative defenses
§ 72:17	— —Attacking fact issue as phony
§ 72:18	—Timing
§ 72:19	—Motions
§ 72:20	—Responses
§ 72:21	—Results—Affirmative defense-type motion
§ 72:22	— —Phony fact-issue-type motion
§ 72:23	—Affidavits—Generally
§ 72:24	— —When not needed or ineffective
§ 72:25	— —When not available
§ 72:26	Standards for deciding motion
§ 72:27	Motion for default judgment—Generally
§ 72:28	—Affidavits and default
§ 72:29	—Setting aside defaults
§ 72:30	—Motion and hearing
§ 72:31	—Demand
§ 72:32	—Setting aside default judgments
§ 72:33	Motions attacking personal jurisdiction—Generally
§ 72:34	Motions attacking jurisdiction over the subject matter—Generally
§ 72:35	Prior action pending

CHAPTER 73. PARTIES

§ 73:1	Introduction
§ 73:2	Permissive joinder of parties
§ 73:3	Compulsory joinder of parties
§ 73:4	Substitution of parties
§ 73:5	Realignment of parties
§ 73:6	Adding parties on counterclaims or cross-claims
§ 73:7	Impleader [third-party practice]—Generally
§ 73:8	Vouching in
§ 73:9	Interpleader—Generally
§ 73:10	Intervention—Generally
§ 73:11	—Procedure
§ 73:12	Class actions—Generally
§ 73:13	—Jurisdiction problems
§ 73:14	—Notice problems
§ 73:15	—Attorney fees
§ 73:16	—Settlement problems
§ 73:17	—Defensive class actions
§ 73:18	Derivative actions by shareholders
§ 73:19	Actions relating to unincorporated voluntary associations

CHAPTER 74. DISCOVERY AND DEPOSITIONS

§ 74:1	Discovery generally—Methods
--------	-----------------------------

- § 74:2 Duty of disclosure
- § 74:3 —Scope of discovery—Generally
- § 74:4 — —Insurance agreements
- § 74:5 — —Work product
- § 74:6 — —Claims of privilege or work product protection
- § 74:7 — —Experts
- § 74:8 —Protective orders—Generally
- § 74:9 — —Sequence and timing of discovery
- § 74:10 —Supplementation of responses
- § 74:11 —Stipulations modifying discovery
- § 74:12 —Meeting of parties; discovery plan
- § 74:13 Sanctions for failure to make discovery—Generally
- § 74:14 —Motion for disclosure or discovery order
- § 74:15 —On failure to comply with order
- § 74:16 —On failure to make disclosure
- § 74:17 —Electronically stored information
- § 74:18 Sanctions and signature requirement
- § 74:19 Depositions—Generally
- § 74:20 —Before whom taken
- § 74:21 —Stipulations regarding taking
- § 74:22 —When taken
- § 74:23 —Notice of taking
- § 74:24 —Subpoenas
- § 74:25 —Taking
- § 74:26 —Wrapping it up
- § 74:27 —Effect of errors and irregularities
- § 74:28 —Use in court proceedings
- § 74:29 Depositions on written questions
- § 74:30 Deposition to perpetuate testimony—Generally
- § 74:31 —Before action
- § 74:32 —Pending appeal
- § 74:33 Interrogatories to parties—Generally
- § 74:34 —Scope and use
- § 74:35 —Response
- § 74:36 —Option to produce business records
- § 74:37 Production of documents and things; entry on land—Generally
- § 74:38 Production of documents and things; entry upon land—Electronically stored information
- § 74:39 Production of documents and things; entry on land—Procedure
- § 74:40 —Against third parties
- § 74:41 Freedom of Information Act—Generally
- § 74:42 —Sample request letter
- § 74:43 —Sample letter of appeal
- § 74:44 Physical and mental examination of persons—Generally
- § 74:45 —Order for examination
- § 74:46 —Report of examiner
- § 74:47 Requests for admissions—Generally

TABLE OF CONTENTS

- § 74:48 —Effect of admission
- § 74:49 —Responding to request
- § 74:50 —Testing answers or objections
- § 74:51 —Expenses on failure to admit

CHAPTER 75. MARSHALING THE TRIAL AND TRIAL

- § 75:1 Introduction
- § 75:2 Pretrial conference
- § 75:3 Multidistrict litigation
- § 75:4 Dismissal of actions—Voluntary
- § 75:5 —Involuntary
- § 75:6 Consolidation of actions
- § 75:7 Separate trials
- § 75:8 Trial briefs
- § 75:9 Hearings before masters
- § 75:10 Trials by Court without jury—Generally
- § 75:11 Trials by jury—Generally
- § 75:12 —Demand for jury trial
- § 75:13 —On order of Court
- § 75:14 —Advisory jury and by consent
- § 75:15 Jurors—Generally
- § 75:16 —Examination of jurors
- § 75:17 —Peremptory challenges
- § 75:18 Subpoenas
- § 75:19 Evidence
- § 75:20 Exceptions unnecessary
- § 75:21 Motions for judgment as matter of law
- § 75:22 Instructions to jury
- § 75:23 Jury verdicts—Generally
- § 75:24 —Special verdicts
- § 75:25 —Verdicts with interrogatories
- § 75:26 Findings by Court—Generally
- § 75:27 —Amendment of findings
- § 75:28 —Judgment on partial findings
- § 75:29 Juror misconduct
- § 75:30 Motion for judgment as a matter of law; renewal
- § 75:31 Renewal of motion for judgment after trial—Conditional rulings on grant of motion
- § 75:32 —Denial of motion

CHAPTER 76. JUDGMENTS AND POSTTRIAL PROCEEDINGS

- § 76:1 Judgments—Generally
- § 76:2 —Declaratory judgments
- § 76:3 —On multiple claims or involving multiple parties
- § 76:4 —Effect of demand for judgment
- § 76:5 —Entry of judgment

- § 76:6 Motion for amendment of judgment
- § 76:7 Interest
- § 76:8 Costs and fees
- § 76:9 —Offer of judgment
- § 76:10 Motion for new trial—Grounds
- § 76:11 —Time
- § 76:12 —Conditions
- § 76:13 —Disability of judge
- § 76:14 Relief from judgments or orders—Clerical mistakes
- § 76:15 —Other bases
- § 76:16 Harmless error
- § 76:17 Stay of proceedings to enforce judgment
- § 76:18 Enforcement of judgments—Generally
- § 76:19 —Registration in other districts
- § 76:20 —Full faith and credit
- § 76:21 Effect of judgments—Generally
- § 76:22 —Merger-bar
- § 76:23 —Collateral estoppel

CHAPTER 77. SPECIAL AND PARTICULAR PROCEEDINGS

- § 77:1 Statute of limitations
- § 77:2 —Laches
- § 77:3 —Nature of limitations
- § 77:4 Provisional remedies
- § 77:5 Injunctions—Generally
- § 77:6 —Temporary restraining orders
- § 77:7 —Preliminary injunctions
- § 77:8 —Anti-Injunction Act
- § 77:9 Alternative methods of dispute resolution

CHAPTER 78. PROCEDURE IN THE COURTS OF APPEAL OF THE UNITED STATES

- § 78:1 In general
- § 78:2 Jurisdiction
- § 78:3 Rules
- § 78:4 Admission to practice
- § 78:5 Filing and service of papers
- § 78:6 Voluntary dismissal
- § 78:7 Substitution of parties
- § 78:8 Time—Appeals of right
- § 78:9 —Appeals by leave
- § 78:10 —Computation of time
- § 78:11 —Extension of time
- § 78:12 Notice of appeal—Filing
- § 78:13 —Joint or consolidated appeals
- § 78:14 —Content
- § 78:15 —Service

TABLE OF CONTENTS

§ 78:16	—Payment of fees
§ 78:17	—Cost bond
§ 78:18	Stay or injunction pending appeal—When sought
§ 78:19	—Conditioned on bond
§ 78:20	Record on appeal—Generally
§ 78:21	—Composition
§ 78:22	—Transcript
§ 78:23	—Statement of evidence
§ 78:24	—Correction of record
§ 78:25	Transmission of record—Generally
§ 78:26	—Temporary retention of record in district court
§ 78:27	—Record for preliminary hearing in court of appeals
§ 78:28	—Agreed statement
§ 78:29	Filing record
§ 78:30	Notice of constitutional question
§ 78:31	Appendix
§ 78:32	—Deferred appendix
§ 78:33	—Format of appendix
§ 78:34	—Reproduction of exhibits
§ 78:35	—Order dispensing with appendix
§ 78:36	—Appeals heard on original record
§ 78:37	Briefs—Filing and serving
§ 78:38	—Contents
§ 78:39	—Reply and supplemental briefs
§ 78:40	—References in briefs
§ 78:41	—Length
§ 78:42	—Cases involving cross-appeals
§ 78:43	—Cases involving multiple parties
§ 78:44	—Amicus curiae
§ 78:45	Appeal conferences
§ 78:46	Oral argument
§ 78:47	Motions
§ 78:48	Entry of judgment
§ 78:49	Panel Rehearing; En Banc Determination
§ 78:50	Mandate
§ 78:51	Special types of appeals
§ 78:52	Form of briefs and other papers

CHAPTER 79. PROCEDURE IN THE SUPREME COURT OF THE UNITED STATES

§ 79:1	In general
§ 79:2	Rules
§ 79:3	Practice before supreme court
§ 79:4	Fees
§ 79:5	Jurisdiction—Generally
§ 79:6	—Original jurisdiction
§ 79:7	—Appellate jurisdiction—Direct appeals from trial courts

- § 79:8 — —Review of decisions of courts of appeals
- § 79:9 — —Review of decisions of state courts
- § 79:10 — —Dismissals
- § 79:11 Time—Generally
- § 79:12 —Certiorari
- § 79:13 —Computation and enlargement
- § 79:14 Filing and service of papers
- § 79:15 Persuading supreme court to consider action on the merits
- § 79:16 —Appeal—Notice of appeal
- § 79:17 — —Stays and supersedeas bonds
- § 79:18 —Certiorari—Elements considered
- § 79:19 — —How sought
- § 79:20 — —Petition
- § 79:21 — —Brief in opposition, reply and supplemental briefs
- § 79:22 Persuading Supreme Court to consider action on the merits—Certiorari—
Granting or denial
- § 79:23 — —Certiorari before judgment by court of appeals
- § 79:24 —Certified questions
- § 79:25 Review on merits
- § 79:26 —Joint appendix
- § 79:27 —Briefs—Time for filing
- § 79:28 — —Contents
- § 79:29 —Form of appendices, petitions, motions and briefs
- § 79:30 —Oral argument
- § 79:31 —Call of calendar
- § 79:32 —Opinions
- § 79:33 —Interest, damages and costs
- § 79:34 Rehearings
- § 79:35 Effect of Supreme Court action other than review on merits
- § 79:36 Process; mandates
- § 79:37 Extraordinary writs—Generally
- § 79:38 —Procedure
- § 79:39 Motion practice—Generally
- § 79:40 —Form of papers
- § 79:41 Applications to individual justices
- § 79:42 Substitution of parties
- § 79:43 Models, diagrams and exhibits

Volume 2

PART K. PRACTICE AND PROCEDURE IN COURTS OF MICHIGAN

CHAPTER 80. MICHIGAN COURTS

- § 80:1 Introduction

TABLE OF CONTENTS

§ 80:2	Court rules—Generally
§ 80:3	—Construction—Generally
§ 80:4	— —Conflicts with statutory provisions
§ 80:5	— —Computation of time
§ 80:6	—Amendment
§ 80:7	—Local court rules and administrative orders
§ 80:8	Subject matter jurisdiction—Generally
§ 80:9	Jurisdiction—Transfer when subject matter jurisdiction lacking
§ 80:10	—Circuit courts—Generally
§ 80:11	— —Superintending control
§ 80:12	— —Appeals
§ 80:13	Aspects of practice—Generally
§ 80:14	—Assignment of cases to judges
§ 80:15	“Rent-a-judge” program
§ 80:16	Program—Appearances—Generally
§ 80:17	— —By party
§ 80:18	— —By attorney
§ 80:19	— —Duration
§ 80:20	— —Students and recent graduates
§ 80:21	—Sample forms—General appearance
§ 80:22	— —Special appearance
§ 80:23	— —Limited appearance
§ 80:24	—Sanctions against attorneys—Generally
§ 80:25	— —In connection with actions
§ 80:26	— —“Frivolous” actions or defenses
§ 80:27	Precedent; stare decisis; court’s authority to overrule
§ 80:28	Referees in domestic relations proceedings—Generally—Qualifications and assignment
§ 80:29	—Hearings
§ 80:30	— —Transcripts; preparation and use
§ 80:31	—Post-hearing procedures; recommended order
§ 80:32	— —Obtaining judicial hearings
§ 80:33	— —Conduct of judicial hearing

CHAPTER 81. PERSONAL JURISDICTION

§ 81:1	Introduction
§ 81:2	Separating process from jurisdiction
§ 81:3	Divorcing venue from jurisdiction and process
§ 81:4	Broadening jurisdiction
§ 81:5	Statutory bases of personal jurisdiction—General versus limited jurisdiction
§ 81:6	—Individuals
§ 81:7	Corporations
§ 81:8	—Partnerships or limited partnerships
§ 81:9	—Partnership associations or unincorporated voluntary associations
§ 81:10	—Sureties
§ 81:11	—Over things and status
§ 81:12	—Implied consent statutes

- § 81:13 Constitutional bases—Generally
- § 81:14 *Shaffer v. Heitner*—Relation to International Shoe
- § 81:15 —Minimum contacts—Generally
- § 81:16 Minimum contacts—Commercial cases
- § 81:17 —Products liability
- § 81:18 —Intentional torts
- § 81:19 —Negligence
- § 81:20 Transitory personal jurisdiction
- § 81:21 Domicile, incorporation and consent
- § 81:22 Special state interest
- § 81:23 In rem actions
- § 81:24 Quasi in rem actions—Generally
- § 81:25 Rejecting jurisdiction—Generally
- § 81:26 —Constitutional basis requiring rejection
- § 81:27 —Consent by contract or statute
- § 81:28 —An exception for all cases—*Forum non conveniens*
- § 81:29 Attacks on jurisdiction—Generally
- § 81:30 —Jurisdiction based on foreign judgments
- § 81:31 —Direct attacks
- § 81:32 —Collateral attacks
- § 81:33 —*Shaffer* hearing

CHAPTER 82. VENUE

- § 82:1 Introduction
- § 82:2 Proper venue—Location of subject of action
- § 82:3 —Governmental units
- § 82:4 —Transport companies
- § 82:5 —Where defendant “established” or located
- § 82:6 —Where cause arose
- § 82:7 —Catch all; actions by attorney general
- § 82:8 —Where causes of action are joined
- § 82:9 —Tort actions—Generally
- § 82:10 — —Silicone implant litigation
- § 82:11 — —Defamation action
- § 82:12 —Legal malpractice
- § 82:13 —Accounting malpractice
- § 82:14 —Miscellaneous venue provisions
- § 82:15 — —Durable power of attorney for health care or mental treatment
- § 82:16 Change of venue—When improperly laid
- § 82:17 —When properly laid
- § 82:18 —Orders
- § 82:19 Disqualification/recusal of judge—Grounds
- § 82:20 —Procedure
- § 82:21 Transfers from one type of court to another—Generally
- § 82:22 —From district to circuit
- § 82:23 —From court lacking jurisdiction over subject matter
- § 82:24 *Forum non conveniens*

CHAPTER 83. PARTIES

- § 83:1 Introduction
- § 83:2 Designation
- § 83:3 Real party in interest
- § 83:4 Capacity to sue or be sued
- § 83:5 Unknown parties
- § 83:6 Legislator as party or witness
- § 83:7 Infants and incompetent parties
- § 83:8 Substitution of parties
- § 83:9 Joinder of parties—Necessary joinder
- § 83:10 —Permissive joinder
- § 83:11 —Misjoinder and nonjoinder; severance for trial
- § 83:12 —Additional defendants to cross-claims or counterclaims
- § 83:13 —Third-party practice—Generally
- § 83:14 Indemnity
- § 83:15 Vouching in—Generally
- § 83:16 —Sample letter tendering defense
- § 83:17 Intervention
- § 83:18 Interpleader

CHAPTER 84. JOINDER OF CLAIMS AND COUNTERCLAIMS

- § 84:1 Introduction
- § 84:2 “Compulsory” joinder of claims
- § 84:3 Compulsory counterclaims and cross-claims
- § 84:4 Using up claim as defense
- § 84:5 Nonrule compulsory joinder
- § 84:6 Permissive joinder—Claims and counterclaims
- § 84:7 —Cross-claims
- § 84:8 Effect of joinder—On procedural issues; filing fees
- § 84:9 Time for filing counterclaim or cross-claim
- § 84:10 Dismissal of counterclaim or cross-claim
- § 84:11 Separation for trial

CHAPTER 85. PLEADING

- § 85:1 Introduction
- § 85:2 Pleadings allowed
- § 85:3 Size and type size requirements
- § 85:4 Captions—Generally
- § 85:5 —Sample form for caption—Complaint
- § 85:6 — —Answer
- § 85:7 Complaints—Generally
- § 85:8 —Division into counts and paragraphs
- § 85:9 —Jurisdictional averments
- § 85:10 —Statement of claim—Generally
- § 85:11 — —Sample demands for judgment or prayer for relief

- § 85:12 — —Malice, intent, condition of mind
- § 85:13 — —Conditions precedent
- § 85:14 — —Insurance policies
- § 85:15 — —Written instrument sued on
- § 85:16 — —Official document or act
- § 85:17 — —Judgment sued on
- § 85:18 — —Statutes, ordinances, or charters
- § 85:19 — —Defamatory language
- § 85:20 — —Damages
- § 85:21 — —Fault of nonparties
- § 85:22 — —Medical malpractice actions
- § 85:23 —Exhibits and adoption by reference
- § 85:24 —Notice of foreign law in issue
- § 85:25 —Signing pleadings
- § 85:26 —Generally
- § 85:27 Responsive pleadings—Generally
- § 85:28 Judgment on stipulated facts
- § 85:29 Answers—Generally
- § 85:30 —Defenses
- § 85:31 —Denials
- § 85:32 —Affirmative defenses
- § 85:33 —Skeleton answer
- § 85:34 Reports due after answer
- § 85:35 Counterclaims
- § 85:36 Cross-claims
- § 85:37 Replies
- § 85:38 Changing pleadings—Amendments generally
- § 85:39 —The misnomer rule
- § 85:40 —Response to amendments
- § 85:41 —Amendments to conform to evidence
- § 85:42 —Relation back of amendments
- § 85:43 —Amendment after summary disposition
- § 85:44 Supplemental pleadings
- § 85:45 Admissions in pleadings

CHAPTER 86. COMMENCEMENT OF ACTION AND PROCESS

- § 86:1 Introduction
- § 86:2 Commencement of action
- § 86:3 Summons—Expiration, dismissal of action
- § 86:4 Role of summons in summary proceedings distinguished
- § 86:5 Service of process—Who may serve
- § 86:6 —Proof of service
- § 86:7 Manner of service—Generally
- § 86:8 —Individuals
- § 86:9 —Partnerships and limited partnerships
- § 86:10 —Private corporations, domestic and foreign

TABLE OF CONTENTS

- § 86:11 —Insurers
- § 86:12 —Partnership associations and unincorporated voluntary associations
- § 86:13 —Public corporations
- § 86:14 —Agent authorized by appointment or by law
- § 86:15 —Registered or certified mail
- § 86:16 —Discretion of court
- § 86:17 —By posting or publication
- § 86:18 Exemptions and civil arrest
- § 86:19 Effect of service and range of process

CHAPTER 87. SERVICE OF PLEADINGS AND PAPERS

- § 87:1 Introduction
- § 87:2 Service—When required
- § 87:3 —On whom
- § 87:4 —How made
- § 87:5 Proof of service
- § 87:6 Filing with court
- § 87:7 Fees for service of process
- § 87:8 Time for service and filing of pleadings—Generally
- § 87:9 —Effect of motions and amendments
- § 87:10 —Additional time

CHAPTER 88. MOTION PRACTICE

- § 88:1 Introduction
- § 88:2 Form of motions—Generally
- § 88:3 —Supporting affidavits
- § 88:4 —Sample form
- § 88:5 Uncontested orders
- § 88:6 Time for service and filing of motions and responses
- § 88:7 Motion fees
- § 88:8 —Sample notice of hearing and proof of service
- § 88:9 Sample alternate notice of hearing with certificate of service
- § 88:10 Sample alternate proof of service
- § 88:11 Hearing
- § 88:12 Motion briefs
- § 88:13 Motion hearings
- § 88:14 —Sample praecipe
- § 88:15 Orders—Generally
- § 88:16 —Sample form to present at hearing
- § 88:17 —Objection to proposed orders
- § 88:18 Order disposing of less than all parties or claims
- § 88:19 Summary disposition—Generally
- § 88:20 —Timing
- § 88:21 —Consolidation and successive motions
- § 88:22 —Grounds
- § 88:23 —Comparable former rules
- § 88:24 —Hybrid motions

- § 88:25 —Affidavits—Generally
- § 88:26 — —When unavailable
- § 88:27 —Disposition including immediate trial—Generally
- § 88:28 — —Case not fully adjudicated or motion denied
- § 88:29 —Lack of jurisdiction over person or property (C)(1)
- § 88:30 —Insufficient process (C)(2)
- § 88:31 —Improper service of process (C)(3)
- § 88:32 —Lack of jurisdiction over subject matter (C)(4)
- § 88:33 —Lack of legal capacity to sue (C)(5)
- § 88:34 —Prior action pending (C)(6)
- § 88:35 —Affirmative defense by motion (C)(7)
- § 88:36 —Demurrer substitute (C)(8)
- § 88:37 —Legally insufficient defense (C)(9)
- § 88:38 —True summary disposition (C)(10)—Generally
- § 88:39 Special problems—Affirmative defense by motion (C)(7)
- § 88:40 —True summary disposition (C)(10)
- § 88:41 Motion for more definite statement
- § 88:42 Motion to strike
- § 88:43 Motion to dismiss—Voluntary dismissal
- § 88:44 —Involuntary dismissal
- § 88:45 Motion to dismiss for lack of progress
- § 88:46 Motion for security for costs
- § 88:47 Motion in limine
- § 88:48 Motion for rehearing or reconsideration
- § 88:49 Motion to sanction frivolous pleading
- § 88:50 Motion for adjournment

CHAPTER 89. INJUNCTIONS AND CONTEMPTS

- § 89:1 Introduction
- § 89:2 When injunction may be sought
- § 89:3 Temporary restraining orders
- § 89:4 —Checklist
- § 89:5 Preliminary injunctions
- § 89:6 Problems in passing on motion
- § 89:7 Injunctions pending appeal—Trial courts power
- § 89:8 —Court of appeals and supreme courts power
- § 89:9 Contempts—Generally
- § 89:10 —Power of court
- § 89:11 —Initiation of proceedings
- § 89:12 —Bond in lieu of arrest
- § 89:13 —Recovery of damages
- § 89:14 —Miscellaneous provisions

CHAPTER 90. EXTRAORDINARY WRITS

I. EXTRAORDINARY WRITS IN GENERAL

- § 90:1 In general

TABLE OF CONTENTS

- § 90:2 General procedure rules apply
- § 90:3 Procedure in appellate court
- § 90:4 Miscellaneous provisions

II. SUPERINTENDING CONTROL

- § 90:5 In general
- § 90:6 Scope of power
- § 90:7 Use of power

III. HABEAS CORPUS

- § 90:8 In general
- § 90:9 Persons entitled to writ
- § 90:10 Jurisdiction to issue writ
- § 90:11 Venue
- § 90:12 Preparing and filing complaint
- § 90:13 Issuance of writ
- § 90:14 Issuance of order to show cause
- § 90:15 Service of writ or order to show cause
- § 90:16 Arrest in connection with writ or order
- § 90:17 Time for answer and hearing
- § 90:18 Answer and compliance
- § 90:19 Hearing and judgment
- § 90:20 Checklist for seeking habeas corpus
- § 90:21 For custody of child
- § 90:22 To bring prisoner to testify—Generally
- § 90:23 —Jurisdiction and venue
- § 90:24 —Motion for writ
- § 90:25 —Answer and hearing
- § 90:26 —Custody of prisoner

IV. MANDAMUS

- § 90:27 In general
- § 90:28 Jurisdiction and venue
- § 90:29 Necessity for immediate action
- § 90:30 Pleading and process
- § 90:31 Hearings in circuit court
- § 90:32 Judgment

V. QUO WARRANTO

- § 90:33 In general
- § 90:34 Jurisdiction and venue
- § 90:35 Parties—Official as plaintiff
- § 90:36 —Application to attorney general
- § 90:37 —Where attorney general refuses to act
- § 90:38 Process and hearing

§ 90:39 Relief obtainable

VI. OTHER EXTRAORDINARY WRITS

§ 90:40 Procedendo

§ 90:41 Ne exeat

§ 90:42 Prohibition

§ 90:43 Certiorari

CHAPTER 91. LIMITATION OF ACTIONS

§ 91:1 Introduction—Generally

§ 91:2 —Table of limitations

§ 91:3 —Nature of limitations

§ 91:4 —Applicable law

§ 91:5 —Conflict of laws—Generally

§ 91:6 — —Borrowing statute

§ 91:7 —Missing limitations as legal malpractice

§ 91:8 —Procedural aspects

§ 91:9 Powers of legislature—Generally

§ 91:10 —Affording reasonable time—Generally

§ 91:11 — —From discovery of cause of action

§ 91:12 —Retrospective application

§ 91:13 Statutory actions—State

§ 91:14 —Federal

§ 91:15 Governments—Actions by

§ 91:16 —Actions against

§ 91:17 Time limits—Generally

§ 91:18 —Counterclaims, setoffs and recoupments

§ 91:19 —Characterization controlling period applicable

§ 91:20 —Contractual periods of limitations

§ 91:21 —Equity and laches

§ 91:22 Accrual of claim—Generally

§ 91:23 —Ignorance of existence of cause; discovery rule

§ 91:24 —Where identity of wrongdoer unknown

§ 91:25 —When law changes

§ 91:26 —Contractual provisions as to accrual

§ 91:27 Tolling of limitations—Generally

§ 91:28 —By notice of insurance claim

§ 91:29 —By commencement of action—Generally

§ 91:30 — —As to nonparties

§ 91:31 —By administrative proceeding

§ 91:32 —By arbitration proceeding

§ 91:33 —By military service—Generally

§ 91:34 — —Who may invoke

§ 91:35 —By absence from state

§ 91:36 —By class action

§ 91:37 Disabilities—Generally

§ 91:38 —Infancy

TABLE OF CONTENTS

§ 91:39	—Insanity
§ 91:40	—Imprisonment
§ 91:41	—Death
§ 91:42	—War
§ 91:43	—Fraudulent concealment
§ 91:44	Revival—Generally
§ 91:45	—Joint obligors
§ 91:46	—Part payment
§ 91:47	Waiver and estoppel
§ 91:48	Specific time limits—Actions for recovery or possession of land—Generally
§ 91:49	— —Actions to foreclose real estate mortgages
§ 91:50	—Actions to recover damages for injuries to persons or property
§ 91:51	—Actions to recover damages for breach of contract
§ 91:52	—Actions to enforce noncontractual money obligations
§ 91:53	—Actions by or against common carriers
§ 91:54	—Catch-all for other personal matters
§ 91:55	Specific accrual provisions—Right to make entry or bring action to recover land
§ 91:56	—Mutual and open account current
§ 91:57	—Breach of warranty
§ 91:58	—Life insurance contracts
§ 91:59	—Installment contracts
§ 91:60	—Alimony payments
§ 91:61	—Professional malpractice
§ 91:62	— —Medical malpractice
§ 91:63	Special problems—Injury or death from defective or unsafe improvements
§ 91:64	—Breach of warranty—Commercial transactions
§ 91:65	— —Consumer and personal injury actions
§ 91:66	—No-fault

CHAPTER 92. DISCOVERY

§ 92:1	Introduction
§ 92:2	Selecting discovery device
§ 92:3	Availability of discovery
§ 92:4	Scope of discovery—Generally
§ 92:5	—Insurance agreements
§ 92:6	— —Insurance files
§ 92:7	—Trial preparation materials (work product)
§ 92:8	—Experts
§ 92:9	Effect of federal HIPAA requirements on disclosure of medical information
§ 92:10	The doctor-patient privilege
§ 92:11	Protective orders—Generally
§ 92:12	Sequence and timing—Generally
§ 92:13	—Time limit for discovery
§ 92:14	Duty to supplement responses—Generally
§ 92:15	—Implementing
§ 92:16	Stipulations regarding discovery procedure

- § 92:17 Filing of discovery materials
- § 92:18 Removal of discovery materials from file
- § 92:19 Sanctions—Generally
- § 92:20 —Signing of discovery requests, responses, and objections
- § 92:21 —Motion for order compelling discovery—Generally
- § 92:22 — —Procedure
- § 92:23 — —Failure to comply with order
- § 92:24 —Direct imposition of sanctions without prior order
- § 92:25 Interrogatories—Generally
- § 92:26 —Scope
- § 92:27 —Sample instructions
- § 92:28 —Advantages of interrogatories
- § 92:29 —Time for service
- § 92:30 —Answers and objections—Generally
- § 92:31 — —Option to produce business records
- § 92:32 —Failure to answer
- § 92:33 Discovery of documents and things—Generally
- § 92:34 —Scope of discovery
- § 92:35 —From nonparties
- § 92:36 —Request to produce—Generally
- § 92:37 —Limitations on scope of disclosure imposed by particular statutes
- § 92:38 —Failure to respond
- § 92:39 Physical and mental examination of persons—Generally
- § 92:40 —Report of findings
- § 92:41 —Refusal
- § 92:42 —In other tribunals
- § 92:43 Request for admissions—Generally
- § 92:44 —Availability and scope
- § 92:45 —Answer or objection
- § 92:46 —Motion regarding answer or objection
- § 92:47 —Filing required
- § 92:48 —Effect of admission
- § 92:49 —Refusal to admit
- § 92:50 Freedom of Information Act

CHAPTER 93. DEPOSITIONS

- § 93:1 Introduction
- § 93:2 When depositions may be taken
- § 93:3 Notice of examination—Generally
- § 93:4 —Objections to notice
- § 93:5 Persons before whom depositions may be taken—Generally
- § 93:6 —In foreign countries
- § 93:7 —Disqualification
- § 93:8 Place of taking deposition
- § 93:9 Getting the witness there—Generally
- § 93:10 —Place of compliance
- § 93:11 Getting there yourself

TABLE OF CONTENTS

- § 93:12 Scope of examination—Generally
- § 93:13 —Objections and errors
- § 93:14 —Protective orders
- § 93:15 —Protective orders and the apex deposition rule
- § 93:16 Refusal of deponent to answer
- § 93:17 Record of examination
- § 93:18 Use of deposition—Generally
- § 93:19 —Objections to admissibility
- § 93:20 Depositions on written questions
- § 93:21 Depositions to perpetuate testimony

CHAPTER 94. MEDIATION

- § 94:1 Introduction
- § 94:2 Alternative dispute resolution
- § 94:3 Mediation
- § 94:4 —Communications, Confidentiality and Disclosure
- § 94:5 Case evaluation panels
- § 94:6 —Selection of case evaluation panels
- § 94:7 Selection of cases for case evaluation
- § 94:8 Objections to case evaluation
- § 94:9 Setting up hearing—Scheduling and notices
- § 94:10 —Fees
- § 94:11 —Submission of documents and briefs
- § 94:12 The hearing
- § 94:13 The decision or award
- § 94:14 Action on decision
- § 94:15 Effect—When accepted
- § 94:16 —Rejection by a party—Generally
- § 94:17 — —Liability for costs
- § 94:18 — —Taxing costs
- § 94:19 Why mediation may be unfair and what to do about it
- § 94:20 Medical malpractice mediation—Introduction
- § 94:21 —Panels
- § 94:22 —Setting up hearing—Scheduling and motions
- § 94:23 — —Fees
- § 94:24 — —Submission of documents and briefs
- § 94:25 —The hearing
- § 94:26 —The decision or award
- § 94:27 —Action on decision
- § 94:28 —Effect of mediation—When accepted
- § 94:29 — —Rejection by party
- § 94:30 Arbitration
- § 94:31 —Actions involving matters subject to arbitration
- § 94:32 —Compelling or seeking a stay of arbitration
- § 94:33 —Deposition; subpoena
- § 94:34 —Hearing
- § 94:35 —Award

CHAPTER 95. PRETRIAL CONFERENCES

- § 95:1 Introduction
- § 95:2 Early scheduling conference and order
- § 95:3 Failure to attend or to participate
- § 95:4 Scope of conference
- § 95:5 —Effect of statements of parties during conference as binding or as admissions
or as waivers of rights or defenses
- § 95:6 Pretrial summary
- § 95:7 Miscellaneous orders
- § 95:8 Relation to discovery

CHAPTER 96. TRIALS

- § 96:1 Introduction
- § 96:2 Preparation for trial
- § 96:3 Adjournments
- § 96:4 Disability of judge or attorney
- § 96:5 Consolidation for trial
- § 96:6 Separate trials
- § 96:7 Subpoenas
- § 96:8 Trial briefs
- § 96:9 The courtroom
- § 96:10 Trial by jury or by court—Generally
- § 96:11 —Sequence of trial
- § 96:12 Challenge to array
- § 96:13 Jury trials—Generally
- § 96:14 —Jury demand—Generally
- § 96:15 — —Specification of issues
- § 96:16 — —Waiver or withdrawal
- § 96:17 —Juror qualifications; personal qualification questionnaire
- § 96:18 —Impaneling jury—Voir dire
- § 96:19 — —Practice tips
- § 96:20 — —Challenges for cause
- § 96:21 — —Peremptory challenges
- § 96:22 —Attempts to influence jurors; liability of jurors; contempts by jurors
- § 96:23 Preliminary instructions
- § 96:24 Who opens
- § 96:25 Opening statements—Generally
- § 96:26 —Time allowed
- § 96:27 Evidence and witnesses
- § 96:28 —Videoconferencing
- § 96:29 Examination of witnesses—Generally
- § 96:30 —Preparation of witnesses
- § 96:31 —Calling hostile witnesses
- § 96:32 —Rebuttal witnesses
- § 96:33 Witness fees and mileage
- § 96:34 Agreements between parties as to evidence or proceedings
- § 96:35 Instructions to jury—Generally

TABLE OF CONTENTS

§ 96:36	—Physical preparation
§ 96:37	—Statement of issues and theory of case
§ 96:38	—Conference on instructions
§ 96:39	Final arguments
§ 96:40	Charge to jury—Generally
§ 96:41	—Objections
§ 96:42	—Additional instructions
§ 96:43	Verdicts—Generally
§ 96:44	—Rendering verdict
§ 96:45	—Special verdicts
§ 96:46	Impeachment of juror’s verdict
§ 96:47	Findings by court
§ 96:48	Motions for directed verdict and for judgment—Generally
§ 96:49	—Directed verdict or dismissal
§ 96:50	—Judgment notwithstanding verdict
§ 96:51	—New trial
§ 96:52	Determining damages in personal injury cases—Introduction and definitions
§ 96:53	—Collateral source rule findings—Generally
§ 96:54	—Joint and several liability findings—Generally
§ 96:55	—Specific findings on damages—Generally
§ 96:56	—Form of judgment—Generally
§ 96:57	—When annuity contract required—Generally
§ 96:58	—Structured payments—Generally

CHAPTER 97. JUDGMENTS

§ 97:1	Introduction
§ 97:2	Interest
§ 97:3	—After tort reform
§ 97:4	Effect of judgment; merger; collateral estoppel; issue preclusion
§ 97:5	Judgment in actions involving multiple claims or multiple parties
§ 97:6	Offers to stipulate to entry of judgment—Generally
§ 97:7	—Acceptance or rejection
§ 97:8	—Costs following rejection
§ 97:9	Relationship with case evaluation
§ 97:10	Default judgments—Generally
§ 97:11	— —Notice of request for default judgment
§ 97:12	— —Entry of default by clerk upon affidavit
§ 97:13	— —Entry of default by motion to court upon hearing
§ 97:14	— —Notice of entry of default
§ 97:15	— —Effect of entry of default
§ 97:16	— —Setting aside default
§ 97:17	—Taking default judgment—Generally
§ 97:18	— —Notice of request
§ 97:19	— —Nonmilitary affidavits
§ 97:20	— —Hearing on default judgment motion
§ 97:21	— —Entry and effect
§ 97:22	—Setting aside default or default judgment

- § 97:23 Declaratory judgments—Generally
- § 97:24 —Procedure
- § 97:25 —Other relief available
- § 97:26 Entry of judgments and orders—Generally
- § 97:27 —Procedure for entry
- § 97:28 —Consent judgments
- § 97:29 Judgments and orders in particular types of actions—Support and domestic relations matters
- § 97:30 — —Entry of judgment or order
- § 97:31 —Miscellaneous other types of actions or proceedings
- § 97:32 Renewal of judgments
- § 97:33 Satisfaction of judgments
- § 97:34 Judgment on bonds
- § 97:35 Transfer of judgments affecting real or personal property
- § 97:36 Installment judgments

CHAPTER 98. COSTS

- § 98:1 Introduction

CHAPTER 99. POSTTRIAL PROCEEDINGS

- § 99:1 Introduction
- § 99:2 New trials—Generally
- § 99:3 —Grounds—Jury trials
- § 99:4 — —Nonjury trials
- § 99:5 —Time for motion
- § 99:6 —Affidavits in support of motion
- § 99:7 —Ruling on motion
- § 99:8 —Remittitur and additur
- § 99:9 —In personal injury actions
- § 99:10 Relief from judgment or order—Generally
- § 99:11 —Grounds—Generally
- § 99:12 — —Clerical mistakes
- § 99:13 — —Defendant not personally notified
- § 99:14 Limitations on corrections of error
- § 99:15 Stay of proceedings—Generally
- § 99:16 —In trial court prior to appeal
- § 99:17 —In appellate court

CHAPTER 100. APPEALS TO CIRCUIT COURT

- § 100:1 Introduction
- § 100:2 Appeals of right—Checklist for appellant
- § 100:3 —Checklist for appellee
- § 100:4 —From municipal courts
- § 100:5 —Fudging
- § 100:6 Appeals by leave—Checklist for appellant
- § 100:7 —Checklist for appellee
- § 100:8 Appeals from administrative agencies

TABLE OF CONTENTS

CHAPTER 101. APPEALS TO THE COURT OF APPEALS

- § 101:1 Introduction
- § 101:2 Standard of review on appeal
- § 101:3 Limitations on appeal; law of the case
- § 101:4 When appeal is of right
- § 101:5 Appeals as of right—Steps by appellant
- § 101:6 —Steps by appellee
- § 101:7 Appeals by leave—Steps by appellant
- § 101:8 —Steps by appellee
- § 101:9 Emergency appeals
- § 101:10 Dismissal of appeals
- § 101:11 Miscellaneous relief in the court of appeals
- § 101:12 Original proceedings
- § 101:13 Motions—Generally
- § 101:14 —Administrative motions
- § 101:15 Resolution of conflicts in court of appeals decisions
- § 101:16 Waiver of right to appeal; preservation of issue for appeal
- § 101:17 Order or disposition

CHAPTER 102. APPEALS TO THE SUPREME COURT

- § 102:1 Introduction
- § 102:2 Standard of review on appeal

CHAPTER 103. DISTRICT COURT PRACTICE

- § 103:1 Introduction
- § 103:2 Official forms
- § 103:3 Jurisdiction—Generally
- § 103:4 —Civil
- § 103:5 —Criminal
- § 103:6 —Powers
- § 103:7 —Special divisions—Generally
- § 103:8 — —Magistrates
- § 103:9 — —Small claims
- § 103:10 — —Traffic
- § 103:11 — —Miscellaneous
- § 103:12 Venue—Generally
- § 103:13 —Small claims
- § 103:14 —Location of court
- § 103:15 Parties and representation
- § 103:16 Forms of action
- § 103:17 Commencement of action
- § 103:18 Security for costs
- § 103:19 Pleadings—Generally
- § 103:20 —Answers and defenses
- § 103:21 Process
- § 103:22 Service of process
- § 103:23 Appearance

- § 103:24 Motion practice
- § 103:25 Pretrial and discovery
- § 103:26 Trials—Calendars
- § 103:27 —Adjournments
- § 103:28 —Consolidation for trial
- § 103:29 —Subpoenas; contempt
- § 103:30 —Recording
- § 103:31 —Small claims
- § 103:32 Trials—Specific cases
- § 103:33 Trials—Jury trials—Demand
- § 103:34 — —Verdict
- § 103:35 — —Small claims
- § 103:36 Judgments—Generally
- § 103:37 —Fees and costs
- § 103:38 Proceedings subsequent to judgment—Generally
- § 103:39 —Supplementary proceedings
- § 103:40 —Appeals

CHAPTER 104. COURT OF CLAIMS PRACTICE

- § 104:1 Introduction
- § 104:2 Structure of court
- § 104:3 Notice of intention to file claim
- § 104:4 Limitation of actions
- § 104:5 Governmental immunity waiver
- § 104:6 Jurisdiction—Generally
- § 104:7 —Small claims
- § 104:8 —Remedy in federal court
- § 104:9 —Equitable jurisdiction
- § 104:10 Venue—Generally
- § 104:11 —Transfer for lack of jurisdiction over subject matter
- § 104:12 —Consolidation with pending case
- § 104:13 Procedure—Generally
- § 104:14 —Pleading
- § 104:15 —Judgment on stipulated facts
- § 104:16 —Process
- § 104:17 —Parties
- § 104:18 —Discovery
- § 104:19 —Trials
- § 104:20 Judgments—Generally
- § 104:21 —Costs
- § 104:22 —Interest
- § 104:23 —Effect
- § 104:24 —Declaratory judgments
- § 104:25 Appeals—Generally

CHAPTER 105. CLASS ACTIONS

- § 105:1 Introduction

TABLE OF CONTENTS

§ 105:2	Requirements—Generally
§ 105:3	—Representation
§ 105:4	—Superiority to other methods
§ 105:5	Describing class—Generally
§ 105:6	—Out-of-state members
§ 105:7	Procedure for certification—Generally
§ 105:8	—Action by the court
§ 105:9	Notice to class members—Generally
§ 105:10	—Proposals regarding notice
§ 105:11	—Content of notice
§ 105:12	—Manner of giving notice
§ 105:13	—Cost of notice
§ 105:14	Opting out
§ 105:15	Intervening
§ 105:16	Statute of limitations
§ 105:17	Counterclaims
§ 105:18	Discovery
§ 105:19	Dismissal or compromise
§ 105:20	Judgments—Generally
§ 105:21	—Fluid recovery
§ 105:22	—Attorney fees
§ 105:23	Defendant classes
§ 105:24	Shareholder’s derivative actions
§ 105:25	Action by fiduciary

PART L. OFFICE MANAGEMENT AND PRACTICE SUGGESTIONS

CHAPTER 106. INTRODUCTION

§ 106:1	Introduction
§ 106:2	The law practice as an economic “engine”
§ 106:3	Law practice similarities over time
§ 106:4	Law practice differences over time
§ 106:5	Alternative ways of starting a law practice
§ 106:6	Malpractice hazards in office sharing arrangements
§ 106:7	Other resources on law office management

CHAPTER 107. FUNDAMENTAL PRINCIPLES OF MANAGEMENT

§ 107:1	Introduction
§ 107:2	Organizational control
§ 107:3	—Physical plant
§ 107:4	—Finances
§ 107:5	—Program
§ 107:6	—Personnel

- § 107:7 Principles of personnel management
- § 107:8 —Unity of command
- § 107:9 —Chain of command
- § 107:10 —Delegation of authority
- § 107:11 —Span of control
- § 107:12 Axioms of law office management
- § 107:13 —Axiom #1: consider management problems in advance
- § 107:14 —Axiom #2: budget time for management
- § 107:15 —Axiom #3: think in terms of systems
- § 107:16 —Axiom #4: delegate each operation to the lowest-paid employee who can perform the operation competently
- § 107:17 —Keep accurate accounting records
- § 107:18 —Keep time records
- § 107:19 Results from application of principles

CHAPTER 108. DECIDING TO OPEN A SOLO PRACTICE

- § 108:1 Decisions to make before you start
- § 108:2 Locating the law office
- § 108:3 Home offices
- § 108:4 Planning for the type of practice
- § 108:5 Organizational issues
- § 108:6 Timing the opening of the practice
- § 108:7 What do you need to start?
- § 108:8 —Library
- § 108:9 —Furniture and office layout
- § 108:10 —Equipment
- § 108:11 —Paper supplies
- § 108:12 —Preparing to hire employees
- § 108:13 The problem of debt in the law office
- § 108:14 Time management
- § 108:15 Where do I go for help?
- § 108:16 —Bar association participation and publications

CHAPTER 109. LEGAL ORGANIZATION OF THE LAW FIRM

- § 109:1 Introduction
- § 109:2 The sole proprietorship
- § 109:3 The partnership
- § 109:4 The professional legal corporation
- § 109:5 The professional limited liability company

CHAPTER 110. MARKETING YOUR PRACTICE

- § 110:1 Introduction
- § 110:2 The ethical issues of law office marketing
- § 110:3 —Communications concerning a lawyer's services
- § 110:4 —Advertising
- § 110:5 —Direct contact with prospective clients; solicitation
- § 110:6 —Communication of fields of practice

TABLE OF CONTENTS

§ 110:7	What is the present state of my practice?
§ 110:8	Where do you want your practice to be in five years?
§ 110:9	Client identification
§ 110:10	Case status reports
§ 110:11	Non-commercial marketing
§ 110:12	Commercial marketing
§ 110:13	Evaluating your marketing plan

CHAPTER 111. SETTING, BILLING AND COLLECTING FEES

§ 111:1	Setting fees—Introduction
§ 111:2	— —Factors affecting establishment of legal fees
§ 111:3	— —The time factor
§ 111:4	— —Office overhead costs
§ 111:5	— —Return on invested capital
§ 111:6	— —The amount, skill and ability involved factor
§ 111:7	— —Rural lawyer versus urban lawyer
§ 111:8	—Fee splitting
§ 111:9	—Determining your base hourly rate
§ 111:10	—Setting your hourly rate
§ 111:11	—The “hourly factor”
§ 111:12	—Hourly rate and/or contingency fee
§ 111:13	—Suggested minimum fees—Generally
§ 111:14	— —Adoption
§ 111:15	— —Annual legal checkup
§ 111:16	— —Appeals
§ 111:17	— —Assignees and receivers
§ 111:18	— —Assumed name certificate
§ 111:19	— —Automobile mileage rate
§ 111:20	— —Bankruptcy
§ 111:21	— —Birth record establishment
§ 111:22	— —Civil cases in circuit court—Generally
§ 111:23	— — —Extraordinary remedies
§ 111:24	— — —Special proceedings
§ 111:25	— —Civil cases in district court
§ 111:26	— —Collections
§ 111:27	— —Condemnation proceeding
§ 111:28	— —Contingent fees in personal injury and wrongful death
§ 111:29	— — —Agreements
§ 111:30	— —Corporations
§ 111:31	— —Criminal matters
§ 111:32	— —Domestic relations
§ 111:33	— —Federal courts
§ 111:34	— —Foreclosure on realty
§ 111:35	— —Juvenile court
§ 111:36	— —Partition
§ 111:37	— —Partnerships

- § 111:38 — — Patents, trademarks and copyrights
- § 111:39 — — Probate—Estates of decedents
- § 111:40 — — — Estates of wards
- § 111:41 — — — Commitment proceedings
- § 111:42 — — — Miscellaneous proceedings
- § 111:43 — — Profit-sharing and pension plans and trusts
- § 111:44 — — Real estate matters
- § 111:45 — — Retainer fees
- § 111:46 — — Sale of business
- § 111:47 — — Summary proceedings
- § 111:48 — — Tax matters
- § 111:49 — — Telephone consultations
- § 111:50 — — Wills and trust agreements
- § 111:51 — — Worker's compensation
- § 111:52 — Alternative methods for setting fees
- § 111:53 Billing the fee—Introduction
- § 111:54 — Avoiding the “Client from Hell”
- § 111:55 — Prepare an office fee schedule
- § 111:56 — — Form of sample fee schedule
- § 111:57 — When to discuss fees
- § 111:58 — Standard retainer agreement proposal
- § 111:59 — — Form for standard retainer agreement
- § 111:60 — Keeping track of time
- § 111:61 — Using a legal assistant in the billing process
- § 111:62 — Billing timing and content
- § 111:63 Collecting the fee—Introduction
- § 111:64 — Send out monthly statements
- § 111:65 — Establish a collection process for overdue accounts
- § 111:66 — Consider suing for unpaid accounts
- § 111:67 — Negotiate settlements when offered
- § 111:68 — Motion to collect fees from opposing party in litigation
- § 111:69 — Negotiating liability for fees; agreement to pay fees under contractual disputes
- § 111:70 Attorney's liens
- § 111:71 Attorneys fees awards as sanctions; frivolous suits; attorney liability
- § 111:72 Attorney's fees awards by statute
- § 111:73 Conclusion

CHAPTER 112. ACCOUNTING FOR LAWYERS

- § 112:1 Purpose of chapter
- § 112:2 Use of accounting knowledge by lawyers
- § 112:3 Generally accepted accounting principles
- § 112:4 Accountant's report—Unqualified and qualified opinions and unaudited reports
- § 112:5 Methods of accounting
- § 112:6 Accounting period
- § 112:7 Value

TABLE OF CONTENTS

§ 112:8	Balance sheet
§ 112:9	Current assets and current liabilities
§ 112:10	Working capital or net current assets
§ 112:11	Cash
§ 112:12	Accounts receivable
§ 112:13	Notes receivable
§ 112:14	Allowance for uncollectible accounts
§ 112:15	Inventories
§ 112:16	Fixed assets
§ 112:17	Leasehold improvements
§ 112:18	Depreciation—In general
§ 112:19	Methods of depreciation
§ 112:20	Straight line depreciation method
§ 112:21	Declining balance depreciation method
§ 112:22	Sum-of-the-years-digits depreciation method
§ 112:23	Unit-of-production depreciation method
§ 112:24	Depletion
§ 112:25	Prepaid expenses and deferred charges
§ 112:26	Intangible assets
§ 112:27	Liabilities
§ 112:28	Accounts payable
§ 112:29	Notes payable
§ 112:30	Other liabilities
§ 112:31	Accrued liabilities or accrued expenses
§ 112:32	Long-term debt
§ 112:33	Reserves
§ 112:34	Estimated liabilities
§ 112:35	Ownership equity or net worth
§ 112:36	Capital stock
§ 112:37	Retained earnings
§ 112:38	Income statements
§ 112:39	Purchase of a business
§ 112:40	Evaluation of price of going business
§ 112:41	Contracts involving percentage of sales
§ 112:42	Damages
§ 112:43	Other areas of the law
§ 112:44	Accounting in the law office
§ 112:45	—Twelve-month running average
§ 112:46	—Calculate your “net charges”
§ 112:47	—Prepare periodic financial statements
§ 112:48	—Accounting for office expenses
§ 112:49	—Bank accounts
§ 112:50	— — Preservation of clients’ money and property
§ 112:51	— — —IOLTA accounts
§ 112:52	Personal accounting information
§ 112:53	Forensic accounting
§ 112:54	IRS tax audit

CHAPTER 113. SYSTEMS IN THE LAW OFFICE

- § 113:1 Introduction
- § 113:2 Non-computer systems—Color coding
- § 113:3 —Systematizing pre-printed forms
- § 113:4 —Client folders
- § 113:5 —Docket control systems
- § 113:6 —Reference notebooks
- § 113:7 —Brief banks
- § 113:8 —Standardized procedures manuals
- § 113:9 Computerized systems in the office
- § 113:10 —Setting up your word processing program
- § 113:11 —Document assembly programs
- § 113:12 —Global search and replace systems
- § 113:13 —Sample search and replace codes for wills
- § 113:14 —Using the “mail merge” feature
- § 113:15 —Sample litigation merge codes
- § 113:16 —Macros

CHAPTER 114. PERSONNEL PRACTICES

- § 114:1 Introduction
- § 114:2 The decision to hire
- § 114:3 Prepare an office operations manual
- § 114:4 —Sample table of contents
- § 114:5 Set up a hiring process
- § 114:6 Employee supervision
- § 114:7 Leadership
- § 114:8 Reduce employee turnover by retention

CHAPTER 115. RECORDS RETENTION

- § 115:1 Record retention requirement
- § 115:2 Ethical considerations
- § 115:3 Practical considerations
- § 115:4 Model record retention policy
- § 115:5 Notice to client of disposition of client file

CHAPTER 116. PREPARING FOR RETIREMENT, DISABILITY AND DEATH

- § 116:1 Introduction
- § 116:2 Sale of a law practice
- § 116:3 —Arranging for the sale of a law practice
- § 116:4 Preparing for a lawyer's disability
- § 116:5 Professional problems on lawyer's death
- § 116:6 Ethical requirement for plan for lawyer's death
- § 116:7 Inventory and protection of client files on death of a lawyer
- § 116:8 Form for contingency agreement
- § 116:9 Lawyer's need for a current personal estate plan

CHAPTER 117. MISCELLANEOUS ETHICAL ISSUES

- § 117:1 Duty owed to clients, generally
- § 117:2 Duty owed to non-clients, generally
- § 117:3 Authority to act on behalf of client
- § 117:4 Effect of representation upon client
- § 117:5 Client intake; conflicts of interest
- § 117:6 —Waiver of conflict of interest
- § 117:7 Legal malpractice; definitions
- § 117:8 Use of state bar ethics opinions; non-binding nature
- § 117:9 Discipline and sanctions against attorney
- § 117:10 Discipline and sanctions against a member of the judiciary
- § 117:11 Discipline and sanctions against attorney—Perjury by attorney
- § 117:12 Termination of attorney-client relationship
- § 117:13 Authority to appear in particular courts
- § 117:14 Attorney-client privilege

PART M. REAL ESTATE ACTIONS

CHAPTER 118. ACTIONS TO DETERMINE INTERESTS IN LAND

- § 118:1 Introduction
- § 118:2 Standing, jurisdiction, and venue
- § 118:3 Complaint; joinder of parties
- § 118:4 Bench or jury trial
- § 118:5 Surveys
- § 118:6 Notice of lis pendens (notice of a pending lawsuit)
- § 118:7 Burden of proof
- § 118:8 Evidentiary matters; statute of frauds
- § 118:9 Arbitration
- § 118:10 Statute of limitations and the doctrine of laches
- § 118:11 Unclean hands
- § 118:12 Res judicata and MCR 3.411(H)
- § 118:13 The trial court's findings and judgment; rehearing; appeals
- § 118:14 Filing money claims for certain values following title findings; abandoning premises
- § 118:15 Acquiring title by adverse possession
- § 118:16 Easements in general; prescriptive easements; implied easements
- § 118:17 Acquiring title by acquiescence
- § 118:18 Slander of title—Common law and statutory basis, causation, statute of limitations
- § 118:19 Race-notice jurisdiction; good-faith purchasers
- § 118:20 After-acquired title doctrine
- § 118:21 Title acquired under the highway-by-user statute; abandonment by nonuser
- § 118:22 Unlawful interference with a possessory interest
- § 118:23 Damage to land
- § 118:24 Actions to determine interests in land involving defunct corporations

- § 118:25 Dower interests
- § 118:26 Priority of interests—Mortgages, liens, and other encumbrances
- § 118:27 Actions to vacate, correct, or revise a recorded plat (distinguishable from a quiet-title action)
- § 118:28 Public and private dedications
- § 118:29 Possible relevant statutory provisions in quiet-title actions

CHAPTER 119. SUMMARY PROCEEDINGS FOR RECOVERY OF POSSESSION OF PREMISES

- § 119:1 Introduction
- § 119:2 Landlord/tenant proceedings—Prerequisites for an action under the SPA
- § 119:3 —Demand for possession (substance and service)
- § 119:4 Land contract forfeitures—Prerequisites for an action under the SPA
- § 119:5 —Notice of forfeiture (substance and service)
- § 119:6 Jurisdiction and venue—Landlord/tenant proceedings & land contract forfeitures
- § 119:7 The SPA summons, appearance date, and filing fees—Landlord/tenant proceedings & land contract forfeitures
- § 119:8 The SPA complaint—Landlord/tenant proceedings
- § 119:9 The SPA complaint; joinder of parties—Land contract forfeitures
- § 119:10 Joinder and removal of claims and counterclaims—Election of remedies—Landlord/tenant proceedings & land contract forfeitures
- § 119:11 Service of process in SPA actions—Landlord/tenant proceedings & land contract forfeitures
- § 119:12 The defendant's appearance and answer—Landlord/tenant proceedings & land contract forfeitures
- § 119:13 Defenses—Landlord/tenant proceedings
- § 119:14 Defaults; failure to appear—Landlord/tenant proceedings & land contract forfeitures
- § 119:15 Pretrial and trial procedural rules—In general—Landlord/Tenant proceedings & land contract forfeitures
- § 119:16 Interim orders (injunctions and escrow)—Landlord/tenant proceedings
- § 119:17 Judgments—Landlord/tenant proceedings & land contract forfeitures
- § 119:18 Costs—Landlord/tenant proceedings & land contract forfeitures
- § 119:19 Postjudgment motions—Landlord/tenant proceedings & land contract forfeitures
- § 119:20 Appeals—Landlord/tenant proceedings & land contract forfeitures
- § 119:21 Order of eviction/writ of restitution—Landlord/tenant proceedings & land contract forfeitures
- § 119:22 Forcible entry and detainer; trespass; action for possession; action for unlawful interference with a possessory interest
- § 119:23 Mobile home park evictions
- § 119:24 Related statutory provisions

CHAPTER 120. REAL ESTATE FORECLOSURES

- § 120:1 Introduction
- § 120:2 Foreclosure by judicial action—Nature of the action
- § 120:3 —General mortgage and land contract principles

TABLE OF CONTENTS

§ 120:4	—Jurisdiction and venue
§ 120:5	—Complaint, pleadings, summons, and service
§ 120:6	—Parties to the action
§ 120:7	—Notice of lis pendens
§ 120:8	—Miscellaneous procedural rules and matters
§ 120:9	—Acceleration clauses
§ 120:10	—Payment: dismissal of complaint; stay of proceedings
§ 120:11	—Defenses in general; statute of limitations
§ 120:12	—Discovery
§ 120:13	—Trial
§ 120:14	—Judgments of foreclosure; interest; accruing taxes and insurance
§ 120:15	—Defaults after judgment; further order founded on first judgment
§ 120:16	—Sale of property under judgment of foreclosure; notice of sale
§ 120:17	—Disposition of surplus
§ 120:18	—Deficiency
§ 120:19	—Right of redemption; clogging the equity of redemption
§ 120:20	—Mortgage trusts in equity
§ 120:21	—Appeals
§ 120:22	Foreclosure by advertisement—Prerequisites for foreclosing by advertisement; overview; nature of action
§ 120:23	—Notice of foreclosure
§ 120:24	—Defenses; time limit to initiate foreclosure
§ 120:25	—Sale of property: procedures and rules
§ 120:26	—Deficiency
§ 120:27	—Application of proceeds on surplus; secondary mortgages or liens
§ 120:28	—Right of redemption; clogging the equity of redemption
§ 120:29	—Rejection of redemption tendering
§ 120:30	—Abandonment of premises
§ 120:31	—Affidavits to perpetuate evidence of sale; recording requirements
§ 120:32	—Recouping costs and expenses
§ 120:33	Miscellaneous Foreclosure Principles, Statutes, and Acts—Priority of interests in general—Mortgages, liens, and other encumbrances
§ 120:34	—Foreclosure: Land Bank Fast Track Act, MCLA §§ 124.751 et seq.
§ 120:35	—Foreclosure: State Housing Development Authority, MCLA §§ 125.1401 et seq.
§ 120:36	—Foreclosure: the Condominium Act, MCLA §§ 559.101 et seq.
§ 120:37	—Foreclosure: Construction Lien Act, MCLA §§ 570.1101 et seq.
§ 120:38	—Foreclosure: real property tax liens, MCLA §§ 211.78 et seq.
§ 120:39	—Potentially relevant statutory provisions

CHAPTER 121. PARTITION SUITS

§ 121:1	Introduction
§ 121:2	Standing or required real property interests; discussion of concurrent ownership; circuit court, family division of circuit court, and probate court proceedings
§ 121:3	Jurisdiction and venue
§ 121:4	The complaint
§ 121:5	Partition actions and notice of lis pendens

- § 121:6 Parties to the partition action—Joinder; service of process
- § 121:7 Court determination—Partition or sale in lieu of partition
- § 121:8 Partition—Determination of interests
- § 121:9 —Appointment of and proceedings before the partition commissioner; commissioner's report
- § 121:10 —Challenges to or confirmation of the partition commissioner's report; partition judgment
- § 121:11 —Expenses and costs; attorney fees
- § 121:12 —Setting off of interests in special cases (interests that belonged to deceased parties; interests of unknown persons resulting from death, legal proceedings, or operation of law relative to known parties; unascertained interests)
- § 121:13 Sale in lieu of partition—Requirements of court's order of sale
- § 121:14 —Sale procedures and requirements
- § 121:15 —Distribution of sale proceeds
- § 121:16 —Costs and expenses
- § 121:17 Partition actions and creditors
- § 121:18 Partition action as basis for time-barred claims to real property
- § 121:19 Arbitration alternative
- § 121:20 Partition actions—Laches and unclean hands
- § 121:21 Trust property and partition
- § 121:22 Partition and guardianships
- § 121:23 Partition actions involving the state of Michigan
- § 121:24 Partition and married women
- § 121:25 Partition and receiverships
- § 121:26 Appeals of partition rulings
- § 121:27 Partition and mineral rights
- § 121:28 Miscellaneous statutes that reference partition
- § 121:29 Possible relevant statutory provisions in partition actions

PART N. ACTIONS FOR INJURIES

CHAPTER 122. SUGGESTIONS FOR THE PREPARATION OF PERSONAL INJURY CASES

- § 122:1 In general
- § 122:2 Interviewing the client
- § 122:3 Sample interview form
- § 122:4 Interview checklist
- § 122:5 Elements of claim
- § 122:6 Contract for attorney services
- § 122:7 —Sample contract of representation
- § 122:8 Photographs
- § 122:9 Police reports
- § 122:10 —Authorization for release of police report
- § 122:11 Scene of accident
- § 122:12 Witnesses

TABLE OF CONTENTS

§ 122:13	—Sample letter to witness
§ 122:14	Notifying the defendant of your claim
§ 122:15	—Sample letter notifying defendant of claim
§ 122:16	—Sample letter putting adjuster on notice
§ 122:17	Notices to governmental agency defendants
§ 122:18	Interviewing the opposition
§ 122:19	Standards of conduct, duty, liability, proximate cause and setoffs
§ 122:20	Obtaining doctors' records; sample letter requesting report
§ 122:21	—Follow-up letter for medical report
§ 122:22	—Sample medical records release
§ 122:23	Obtaining records—Sealed records
§ 122:24	Obtaining hospital records
§ 122:25	—Sample request for limited portions of the hospital chart
§ 122:26	—Sample request for the full hospital chart
§ 122:27	Weather reports
§ 122:28	Determining proper defendants
§ 122:29	Determining damages
§ 122:30	—Sample diary log for damages
§ 122:31	—Client confidential monthly report to attorney; sample
§ 122:32	Settlements
§ 122:33	—Sample letter to client re: settlement offer
§ 122:34	—Structured settlements
§ 122:35	Declining cases
§ 122:36	Preparation of law
§ 122:37	Preparation in law—Statute of limitations and other fatal defenses
§ 122:38	—Assessing types and sufficiency of available evidence
§ 122:39	Discovery requests
§ 122:40	File arrangements
§ 122:41	Bringing actions on behalf of decedent's estates, minors or incompetents
§ 122:42	—Sample petition for appointment of next friend
§ 122:43	—Sample order for appointment of next friend
§ 122:44	Request for employment verification
§ 122:45	—Authorization for release of employment records
§ 122:46	Letter to defendant's employer
§ 122:47	Client's medical examination; sample letter to client
§ 122:48	—Instructions to client
§ 122:49	—Client's report of medical examination
§ 122:50	Expert witnesses
§ 122:51	Lawsuit preparation questions

CHAPTER 123. SUGGESTIONS FOR THE PREPARATION OF MEDICAL MALPRACTICE CASES

§ 123:1	Malpractice—Generally
§ 123:2	Presuit preparation of malpractice cases—Generally
§ 123:3	—Obtaining medical records
§ 123:4	—Sample requests for records
§ 123:5	—Reviewing the medical records

- § 123:6 —Review of records by medical experts
- § 123:7 —Affidavit of merit
- § 123:8 Presuit preparation for malpractice cases—Affidavit of merit—Use of affidavit at trial
- § 123:9 Presuit preparation of malpractice cases—Presuit handling of noninvolved treating physicians
- § 123:10 Types of actions generally
- § 123:11 Professional negligence defined
- § 123:12 Standard of care for general practitioners
- § 123:13 Standard of care for specialist
- § 123:14 Standard of care for nurses
- § 123:15 Third party duty of care for mental health professionals
- § 123:16 Proximate causation
- § 123:17 Loss of opportunity to survive
- § 123:18 Informed consent
- § 123:19 Doctrine of avoidable consequences
- § 123:20 Res ipsa loquitur
- § 123:21 Ostensible agency
- § 123:22 Governmental immunity for publicly owned hospitals
- § 123:23 Statute of limitations—Generally
- § 123:24 —In wrongful death cases
- § 123:25 Statute of limitations in cases involving minors
- § 123:26 Statute of limitations in cases involving mental incompetence
- § 123:27 —Discovery rule
- § 123:28 Limitations on damages
- § 123:29 —Comparative negligence
- § 123:30 —Collateral sources
- § 123:31 Notice of intent to file claim; tolling provisions
- § 123:32 Pleading—Generally
- § 123:33 —Affidavit of noninvolvement
- § 123:34 —Affidavit of Meritorious Defense
- § 123:35 Discovery
- § 123:36 Medical texts
- § 123:37 Expert medical testimony
- § 123:38 Model jury instructions
- § 123:39 Arbitration

CHAPTER 124. WORKERS' COMPENSATION IN MICHIGAN: LAW & PRACTICE IN A NUTSHELL

- § 124:1 Introduction
- § 124:2 Relationship to other laws
- § 124:3 Creation and purpose of Michigan's workers' compensation system
- § 124:4 The reach of the Michigan Act
- § 124:5 Employers and employees covered by the Act
- § 124:6 Injury "arising out of and in the course of employment"
- § 124:7 Causation standards
- § 124:8 Disability

TABLE OF CONTENTS

§ 124:9	Favored work/reasonable employment
§ 124:10	Wage loss benefits
§ 124:11	Adjustments to benefits
§ 124:12	Medical expenses
§ 124:13	Vocational rehabilitation
§ 124:14	—Appliances and physical aids as medically necessary
§ 124:15	Death benefits
§ 124:16	Special types of claims
§ 124:17	Whether to represent the prospective client
§ 124:18	The initial client interview; checklist of items for client to bring
§ 124:19	—Attorney’s client interview form
§ 124:20	Filing the application for hearing
§ 124:21	—Mediation
§ 124:22	—Place and date of injury
§ 124:23	—How injury occurred and relief sought
§ 124:24	—Other elements of application for hearing
§ 124:25	Pretrial discovery
§ 124:26	—Obtaining medical records
§ 124:27	Pre-trial notice and hearing
§ 124:28	Depositions
§ 124:29	Settlements before trial—Redemptions
§ 124:30	—Voluntary payment agreements
§ 124:31	Trial of a workers’ compensation case
§ 124:32	Employer’s petition for cessation of benefits
§ 124:33	Appeals
§ 124:34	Attorney’s fees
Appendix A.	Application for Mediation or Hearing—Form A
Appendix B.	Subpoena for Production of Records (and/or) Witness Subpoena
Appendix C.	Redemption Order
Appendix D.	Agreement to Redeem Liability
Appendix E.	Affidavit in Support of Redemption (Settlement) Agreement
Appendix F.	Workers’ Settlement Statement
Appendix G.	Voluntary Payment Form
Appendix H.	Stipulation Questionnaire
Appendix I.	State Average Weekly Wage & Minimum Benefit Amounts from 1982–2012

CHAPTER 125. AUTOMOBILE ACCIDENT CASES

§ 125:1	Introduction
§ 125:2	Related claims
§ 125:3	Statutory and common law liability, generally
§ 125:4	Overview of the Michigan No-Fault Act
§ 125:5	Identifying the owner of the vehicle
§ 125:6	Third-party economic damage claims
§ 125:7	Third-party loss of consortium claims

- § 125:8 Third-party property damage claims
- § 125:9 Progression of the Michigan No-Fault Act to today
- § 125:10 The threshold statute
- § 125:11 Definition of “serious impairment of body function”
- § 125:12 Definition of “permanent serious disfigurement”
- § 125:13 Statutory intent
- § 125:14 Obtaining just relief in automobile accident cases—Plaintiff’s perspective
- § 125:15 —Proving objective manifestation
- § 125:16 —Proving pain and impairment
- § 125:17 Pursuing the claim
- § 125:18 —Hiring experts
- § 125:19 —Investigating the scene
- § 125:20 —Talking with witnesses
- § 125:21 —Dealing with defendant’s explanations and excuses; sudden emergency doctrine; presumptions
- § 125:22 —Dealing with defendant’s explanations and excuses; unlawful use of a vehicle and the innocent third party doctrine
- § 125:23 —Dealing with plaintiff’s improper or contributory behavior
- § 125:24 Sample complaint (single plaintiff)
- § 125:25 Sample interrogatories and request for production of documents to defendant driver
- § 125:26 Sample interrogatories and request for production of documents to defendant owner

PART O. IMMIGRATION

CHAPTER 126. ALIENS, IN GENERAL; NONIMMIGRANTS

- § 126:1 Aliens, generally; immigrants and nonimmigrants
- § 126:2 Statutory overview; definitions
- § 126:3 Mandatory registration by all aliens, regardless of classification
- § 126:4 Entry documents; passports, visas, permits, and border-crossing cards
- § 126:5 —Persons exempt
- § 126:6 Effect of departure; requirements upon reentry
- § 126:7 Inadmissibility and ineligibility for visa; waivers and exceptions
- § 126:8 Nonimmigrant aliens; classifications of nonimmigrants—Generally
- § 126:9 Classifications and permissible duration of stay
- § 126:10 Eligibility
- § 126:11 —Classes of aliens as ineligible
- § 126:12 Application procedure
- § 126:13 Approval or denial; appeal
- § 126:14 Seeking entry; inspection—Entry documents
- § 126:15 Fingerprinting
- § 126:16 Presumptions and proof
- § 126:17 Conditions of admission

CHAPTER 127. IMMIGRANT ALIENS; PERMANENT RESIDENTS

- § 127:1 Generally

TABLE OF CONTENTS

- § 127:2 Immigrant classifications and status, generally
- § 127:3 —Family members; quotas or limit levels
- § 127:4 —Employment-based workers; preferences
- § 127:5 —Special immigrants
- § 127:6 —Diversity immigrants
- § 127:7 Forfeiture or abandonment of status

CHAPTER 128. EXTENDING ALIEN’S STAY

- § 128:1 Generally
- § 128:2 Eligibility; aliens not eligible for extension
- § 128:3 —Students
- § 128:4 —Foreign governmental or international organization representatives
- § 128:5 Requirement that alien apply for extension
- § 128:6 Who must apply; forms and filing requirements, generally; proof and supporting documentation required
- § 128:7 Consequences of failure to maintain, or expiration of, status
- § 128:8 Decision and appeal

CHAPTER 129. ADJUSTMENT OF STATUS

- § 129:1 What constitutes “adjustment;” effect on derivative beneficiary
- § 129:2 Threshold elements of determination; eligibility
- § 129:3 —Particular categories and classifications of aliens
- § 129:4 Discretionary elements of determination; discretionary factors
- § 129:5 Effect of departure while application is pending
- § 129:6 Application and supporting documents or waiver requests, generally
- § 129:7 Medical examination
- § 129:8 Evidentiary requirements
- § 129:9 Decision; notice
- § 129:10 Post-approval procedure
- § 129:11 Special provisions applicable to “A” Or “G” nonimmigrants
- § 129:12 Eligibility and prerequisites
- § 129:13 Application procedure; supporting documentary evidence
- § 129:14 Decision; notice; appeal
- § 129:15 To nonimmigrant, generally
- § 129:16 Notice; waiver
- § 129:17 Answer; record, reports, and recommendations and action thereon

CHAPTER 130. CONSEQUENCES OF IMMIGRATION VIOLATION, IMPROPER ENTRY OR CONTINUED PRESENCE; OR IMPROPER IMMIGRATION CLASSIFICATION

- § 130:1 Denial, revocation, or termination of parole
- § 130:2 Recission of status or adjustment of status, generally; grounds
- § 130:3 Right to counsel
- § 130:4 Commencement of proceeding; notice
- § 130:5 Answer; request for hearing

- § 130:6 Hearing, generally
- § 130:7 Decision and order; effect
- § 130:8 Appeal; reconsideration; collateral attack
- § 130:9 Removal or deportation, generally
- § 130:10 Grounds
- § 130:11 Procedure for removal; entitlement to hearing
- § 130:12 Consequences of removal or deportation; reentry
- § 130:13 Illegal entry or re-entry
- § 130:14 Illegal re-entry after deportation
- § 130:15 Smuggling and harboring aliens
- § 130:16 Miscellaneous other offenses
- § 130:17 Indictment
- § 130:18 Arrest
- § 130:19 Jurisdiction and venue
- § 130:20 Evidence
- § 130:21 Sentencing
- § 130:22 —Departing from sentencing guidelines
- § 130:23 Issuance of detainer against alien
- § 130:24 Seizure and forfeiture
- § 130:25 Jurisdiction
- § 130:26 Exhaustion of administrative remedies
- § 130:27 Standard and scope of review

PART P. SOCIAL SECURITY

CHAPTER 131. INTRODUCTION

- § 131:1 Overview
- § 131:2 The social security system—In general
- § 131:3 —Agency administrative structure
- § 131:4 —Procedure generally

CHAPTER 132. SOCIAL SECURITY BENEFITS

- § 132:1 Introduction
- § 132:2 Retirement benefits
- § 132:3 Dependency and survivor benefits
- § 132:4 Disability insurance coverage
- § 132:5 Medicare benefits
- § 132:6 Special qualities of benefits; exemption from execution or attachment; government offsets

CHAPTER 133. NONPAYMENT, REDUCED PAYMENT AND TERMINATION

- § 133:1 Nonpayment or reduced payments
- § 133:2 —Effect of worker's compensation payments
- § 133:3 Insurance work-loss benefits
- § 133:4 Termination of benefits

TABLE OF CONTENTS

CHAPTER 134. SUPPLEMENTAL SECURITY INCOME BENEFITS

- § 134:1 Supplemental security income—Generally
- § 134:2 Limitations on SSI benefits
- § 134:3 Factors of SSI entitlement
- § 134:4 SSI presumptive disability and emergency advances

CHAPTER 135. TECHNICAL AND SPECIAL COMPONENTS OF DISABILITY

- § 135:1 Disability—In general
- § 135:2 Initial disability determination—Generally
- § 135:3 Disability evaluations
- § 135:4 Sequential evaluation of disability—Generally
- § 135:5 —Working terminology
- § 135:6 Is worker engaged in substantial gainful activity?
- § 135:7 Does worker have a severe impairment?
- § 135:8 Does worker have an impairment that meets or equals Listings?
- § 135:9 Does impairment prevent past relevant work?
- § 135:10 Does impairment prevent other work in the national economy?
- § 135:11 Monthly cash benefits for disabled adult child—Generally
- § 135:12 — —Factors of entitlement
- § 135:13 — —Termination events
- § 135:14 Monthly cash benefits for disabled widow(er)—Generally
- § 135:15 — —Nonpayment provisions

CHAPTER 136. APPLICATION FOR BENEFITS

- § 136:1 Initiation of claim process
- § 136:2 Application for benefits—Generally
- § 136:3 —Time limits
- § 136:4 —Filing date
- § 136:5 —Nonprescribed form
- § 136:6 —SSI benefits

CHAPTER 137. ADMINISTRATIVE APPEALS

- § 137:1 Administrative review process—In general
- § 137:2 —Reconsideration
- § 137:3 Prehearing case review
- § 137:4 Administrative law judge hearing
- § 137:5 Prehearing and posthearing conferences
- § 137:6 Notice of hearing and issues
- § 137:7 Hearing and decision
- § 137:8 —Hypothetical questions
- § 137:9 Interim benefits
- § 137:10 Credibility determination
- § 137:11 Review by appeals council
- § 137:12 Process of review

CHAPTER 138. ADMINISTRATIVE FINALITY

- § 138:1 Administrative finality—Reopening claims
- § 138:2 —Good cause for reopening
- § 138:3 —Form
- § 138:4 —Advantage in reopening cases
- § 138:5 Extensions of time for filing appeals—Generally
- § 138:6 —Good cause for seeking extensions
- § 138:7 Differences in seeking extension over reopening of case
- § 138:8 —Presenting application for extension of time
- § 138:9 —Advantages of requesting an extension

CHAPTER 139. FEDERAL COURT REVIEW

- § 139:1 Review by federal court—Generally
- § 139:2 Expedited appeal process
- § 139:3 Requesting an expedited appeal
- § 139:4 Extension of time
- § 139:5 Agreement for expedited appeal

CHAPTER 140. LEGAL REPRESENTATION AND FEES

- § 140:1 Representation of claimants—Generally
- § 140:2 Qualifications of attorney
- § 140:3 Appointment of representative
- § 140:4 Expiration or revocation of representation
- § 140:5 Attorneys' fees—Social Security Act
- § 140:6 Petitions for fees
- § 140:7 Evaluation of attorneys' fee petitions
- § 140:8 Review of fee awards
- § 140:9 Attorneys' fees—Equal Access to Justice Act

CHAPTER 141. PREPARATION OF DISABILITY CASE AND CLIENT

- § 141:1 Scope of chapter
- § 141:2 The client interview—Objectives
- § 141:3 —Sample interview form
- § 141:4 Securing new medical evidence—Generally
- § 141:5 —Procedure
- § 141:6 Vocational experts
- § 141:7 Securing lay evidence
- § 141:8 Application of regulatory standards

PART Q. CONSUMER PROTECTION AND RIGHTS

CHAPTER 142. LEGISLATION AND ENFORCEMENT

- § 142:1 Statutory framework, in general
- § 142:2 Applicability; definitions

TABLE OF CONTENTS

- § 142:3 Exclusions
- § 142:4 Persons protected
- § 142:5 Remedies; subpoena power; assurance of discontinuance
- § 142:6 —Injunction; notice to cease and desist
- § 142:7 —Civil penalties
- § 142:8 —Class action
- § 142:9 —Private right of action
- § 142:10 — —Private class action
- § 142:11 — —Damages; costs; attorneys' fees
- § 142:12 —Criminal penalties and fines

CHAPTER 143. ADVERTISING AND TRADE PRACTICES

- § 143:1 Unfair or deceptive trade practices defined
- § 143:2 —Misrepresentation and intent to deceive
- § 143:3 Advertising restrictions, generally
- § 143:4 —Advertising or listing assumed or fictitious business
- § 143:5 —Advertising or listing of business address or local telephone number
- § 143:6 —Internet and other computer-related advertising issues
- § 143:7 —Use of particular terms in advertising or name; Unfair Trade Practice Act
- § 143:8 —Price advertising
- § 143:9 —Fax advertising
- § 143:10 Telephone solicitation
- § 143:11 Sale of business opportunity; notices
- § 143:12 Home solicitation sales
- § 143:13 Unsolicited sending of goods
- § 143:14 Pricing of goods
- § 143:15 —False representation of reduced price

CHAPTER 144. FINANCE AND CREDIT REGULATIONS

- § 144:1 Credit reform
- § 144:2 Credit services protection
- § 144:3 Credit reporting practices
- § 144:4 Consumer financial services, in general
- § 144:5 Retail installment sales, in general
- § 144:6 —Retail charge agreements
- § 144:7 —Provisions prohibited in any contract or agreement
- § 144:8 —Prohibited grounds for denial of application
- § 144:9 —Assignment
- § 144:10 —Violation; remedies; enforcement
- § 144:11 Rental-purchase agreements; form and content
- § 144:12 —Statutory form
- § 144:13 —Advertising and price labeling restrictions
- § 144:14 —Other prohibited practices
- § 144:15 —Rights and remedies
- § 144:16 Buyer's cancellation or right of rescission
- § 144:17 Seller's rescission; duty to refund amounts paid
- § 144:18 Credit reporting practices

§ 144:19 Collection practices, in general

CHAPTER 145. CONSUMER LAWS RELATING TO REAL PROPERTY

- § 145:1 Discriminatory advertising
- § 145:2 Residential real estate mortgage lending, in general
- § 145:3 —Consumer mortgage protection
- § 145:4 —Home improvement financing
- § 145:5 — —Rights, remedies, and enforcement procedures
- § 145:6 Landlord-tenant relationships
- § 145:7 —Truth-in-Renting requirements
- § 145:8 — —Remedies and enforcement
- § 145:9 Seller disclosure requirements
- § 145:10 —Exceptions from liability
- § 145:11 Vendor and purchaser risks deemed part of contract
- § 145:12 Mobile homes
- § 145:13 Real estate and mortgage brokers

CHAPTER 146. CONSUMER LAWS RELATING TO PERSONAL PROPERTY

- § 146:1 Motor vehicles—Leases
- § 146:2 —Used car lots
- § 146:3 —Financing sales of motor vehicles
- § 146:4 —Repair warranties; Lemon Law
- § 146:5 —Motor vehicle protection products
- § 146:6 Children's product safety
- § 146:7 Medical billing for laboratory services
- § 146:8 Medical and hospital charges
- § 146:9 Storage, cleaning, or repair services, in general
- § 146:10 —Appliance repair
- § 146:11 — —Appliance service contracts—Company work stoppage protection
- § 146:12 Wheelchair sales and leases
- § 146:13 Utility service and billing practices
- § 146:14 Labeling and testing—Hazardous substances
- § 146:15 —Food and drugs
- § 146:16 Molds

Table of Laws and Rules

Table of Cases

Index