

# 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 Recission 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—Fingerprints; state police report

§ 68:6 —Consent to change by minor or parent

§ 68:7 Hearing and publication

§ 68:8 —Confidential proceedings

§ 68:9 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	<i>[Reserved]</i>
§ 72:26	Motion for summary judgment—Affidavits—When not available
§ 72:27	Standards for deciding motion
§ 72:28	Motion for default judgment—Generally
§ 72:29	—Affidavits and default
§ 72:30	—Setting aside defaults
§ 72:31	—Motion and hearing
§ 72:32	—Demand
§ 72:33	—Setting aside default judgments
§ 72:34	Motions attacking personal jurisdiction—Generally
§ 72:35	Motions attacking jurisdiction over the subject matter—Generally
§ 72:36	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

## TABLE OF CONTENTS

- § 74:46 —Report of examiner
- § 74:47 Requests for admissions—Generally
- § 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



## TABLE OF CONTENTS

§ 78:14	—Content
§ 78:15	—Service
§ 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 *[Reserved]*
- § 82:15 Proper venue—Miscellaneous venue provisions
- § 82:16 — —Durable power of attorney for health care or mental treatment
- §§ 82:17 to 82:24 *[Reserved]*
- § 82:25 Change of venue—When improperly laid
- § 82:26 —When properly laid
- § 82:27 —Orders
- §§ 82:28 to 82:34 *[Reserved]*
- § 82:35 Disqualification/recusal of judge—Grounds
- § 82:36 —Procedure
- §§ 82:37 to 82:104 *[Reserved]*

## TABLE OF CONTENTS

- § 82:105 Transfers from one type of court to another—Generally
- § 82:106 —From district to circuit
- § 82:107 *[Reserved]*
- § 82:108 Transfers from one type of court to another—From court lacking jurisdiction  
over subject matter
- §§ 82:109 to 82:204 *[Reserved]*
- § 82:205 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

## TABLE OF CONTENTS

- § 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
- § 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 to 87:10 *[Reserved]*
- § 87:11 Time for service and filing of pleadings—Generally
- § 87:12 —Effect of motions and amendments
- § 87:13 —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 to 88:10 *[Reserved]*
- § 88:11 Uncontested orders
- § 88:12 Time for service and filing of motions and responses
- § 88:13 Motion fees
- § 88:14 —Sample notice of hearing and proof of service
- § 88:15 Sample alternate notice of hearing with certificate of service
- § 88:16 Sample alternate proof of service
- §§ 88:17 to 88:22 *[Reserved]*
- § 88:23 Hearing
- § 88:24 Motion briefs
- § 88:25 Motion hearings

- § 88:26 —Sample praecipe
- §§ 88:27 to 88:34 *[Reserved]*
- § 88:35 Orders—Generally
- § 88:36 —Sample form to present at hearing
- § 88:37 —Objection to proposed orders
- § 88:38 *[Reserved]*
- § 88:39 Order disposing of less than all parties or claims
- §§ 88:40 to 88:105 *[Reserved]*
- § 88:106 Summary disposition—Generally
- § 88:107 —Timing
- § 88:108 —Consolidation and successive motions
- § 88:109 —Grounds
- § 88:110 —Comparable former rules
- § 88:111 —Hybrid motions
- § 88:112 —Affidavits—Generally
- § 88:113 — —When unavailable
- § 88:114 —Disposition including immediate trial—Generally
- § 88:115 — —Case not fully adjudicated or motion denied
- § 88:116 —Lack of jurisdiction over person or property (C)(1)
- § 88:117 —Insufficient process (C)(2)
- § 88:118 —Improper service of process (C)(3)
- § 88:119 —Lack of jurisdiction over subject matter (C)(4)
- § 88:120 —Lack of legal capacity to sue (C)(5)
- § 88:121 —Prior action pending (C)(6)
- § 88:122 —Affirmative defense by motion (C)(7)
- § 88:123 —Demurrer substitute (C)(8)
- § 88:124 —Legally insufficient defense (C)(9)
- § 88:125 —True summary disposition (C)(10)—Generally
- §§ 88:126 to 88:135 *[Reserved]*
- § 88:136 Special problems—Affirmative defense by motion (C)(7)
- §§ 88:137 to 88:145 *[Reserved]*
- § 88:146 Special problems—True summary disposition (C)(10)
- §§ 88:147 to 88:205 *[Reserved]*
- § 88:206 Motion for more definite statement
- § 88:207 Motion to strike
- § 88:208 Motion to dismiss—Voluntary dismissal
- § 88:209 —Involuntary dismissal
- § 88:210 Motion to dismiss for lack of progress
- § 88:211 Motion for security for costs
- § 88:212 Motion in limine
- § 88:213 Motion for rehearing or reconsideration
- § 88:214 Motion to sanction frivolous pleading
- § 88:215 Motion for adjournment

## CHAPTER 89. INJUNCTIONS AND CONTEMPTS

- § 89:1 Introduction
- § 89:2 When injunction may be sought



## TABLE OF CONTENTS

§ 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 to 89:21	<i>[Reserved]</i>
§ 89:22	Contempts—Generally
§ 89:23	—Power of court
§ 89:24	—Initiation of proceedings
§ 89:25	—Bond in lieu of arrest
§ 89:26	—Recovery of damages
§ 89:27	—Miscellaneous provisions

## CHAPTER 90. EXTRAORDINARY WRITS

### I. EXTRAORDINARY WRITS IN GENERAL

§ 90:1	In general
§ 90:2	General procedure rules apply
§ 90:3	Procedure in appellate court
§ 90:4	Miscellaneous provisions
§§ 90:5 to 90:10	<i>[Reserved]</i>

### II. SUPERINTENDING CONTROL

§ 90:11	In general
§ 90:12	Scope of power
§ 90:13	Use of power
§§ 90:14 to 90:20	<i>[Reserved]</i>

### III. HABEAS CORPUS

§ 90:21	In general
§ 90:22	Persons entitled to writ
§ 90:23	Jurisdiction to issue writ
§ 90:24	Venue
§ 90:25	Preparing and filing complaint
§ 90:26	Issuance of writ
§ 90:27	Issuance of order to show cause
§ 90:28	Service of writ or order to show cause
§ 90:29	Arrest in connection with writ or order
§ 90:30	Time for answer and hearing
§ 90:31	Answer and compliance
§ 90:32	Hearing and judgment
§ 90:33	Checklist for seeking habeas corpus
§§ 90:34 to 90:37	<i>[Reserved]</i>
§ 90:38	For custody of child
§§ 90:39 to 90:40	<i>[Reserved]</i>

- § 90:41 To bring prisoner to testify—Generally
- § 90:42 —Jurisdiction and venue
- § 90:43 —Motion for writ
- § 90:44 —Answer and hearing
- § 90:45 —Custody of prisoner
- §§ 90:46 to 90:50 *[Reserved]*

#### IV. MANDAMUS

- § 90:51 In general
- § 90:52 Jurisdiction and venue
- § 90:53 Necessity for immediate action
- § 90:54 Pleading and process
- § 90:55 Hearings in circuit court
- § 90:56 Judgment
- §§ 90:57 to 90:60 *[Reserved]*

#### V. QUO WARRANTO

- § 90:61 In general
- § 90:62 Jurisdiction and venue
- § 90:63 Parties—Official as plaintiff
- § 90:64 —Application to attorney general
- § 90:65 —Where attorney general refuses to act
- § 90:66 Process and hearing
- § 90:67 Relief obtainable
- §§ 90:68 to 90:70 *[Reserved]*

#### VI. OTHER EXTRAORDINARY WRITS

- § 90:71 Procedendo
- § 90:72 Ne exeat
- § 90:73 Prohibition
- § 90:74 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, 91:10 *[Reserved]*
- § 91:11 Powers of legislature—Generally
- § 91:12 —Affording reasonable time—Generally
- § 91:13 — —From discovery of cause of action
- § 91:14 —Retrospective application

## TABLE OF CONTENTS

§ 91:15	Statutory actions—State
§ 91:16	—Federal
§ 91:17	Governments—Actions by
§ 91:18	—Actions against
§§ 91:19, 91:20	<i>[Reserved]</i>
§ 91:21	Time limits—Generally
§ 91:22	—Counterclaims, setoffs and recoupments
§ 91:23	—Characterization controlling period applicable
§ 91:24	—Contractual periods of limitations
§ 91:25	—Equity and laches
§§ 91:26 to 91:30	<i>[Reserved]</i>
§ 91:31	Accrual of claim—Generally
§ 91:32	—Ignorance of existence of cause; discovery rule
§ 91:33	—Where identity of wrongdoer unknown
§ 91:34	—When law changes
§ 91:35	—Contractual provisions as to accrual
§§ 91:36 to 91:40	<i>[Reserved]</i>
§ 91:41	Tolling of limitations—Generally
§ 91:42	—By notice of insurance claim
§ 91:43	—By commencement of action—Generally
§ 91:44	— —As to nonparties
§ 91:45	—By administrative proceeding
§ 91:46	—By arbitration proceeding
§ 91:47	—By military service—Generally
§ 91:48	— —Who may invoke
§ 91:49	—By absence from state
§ 91:50	—By class action
§ 91:51	<i>[Reserved]</i>
§ 91:52	Disabilities—Generally
§ 91:53	—Infancy
§ 91:54	—Insanity
§ 91:55	—Imprisonment
§ 91:56	—Death
§ 91:57	—War
§ 91:58	—Fraudulent concealment
§§ 91:59 to 91:61	<i>[Reserved]</i>
§ 91:62	Revival—Generally
§ 91:63	—Joint obligors
§ 91:64	—Part payment
§§ 91:65 to 91:71	<i>[Reserved]</i>
§ 91:72	Waiver and estoppel
§§ 91:73 to 91:81	<i>[Reserved]</i>
§ 91:82	Specific time limits—Actions for recovery or possession of land—Generally
§ 91:83	— —Actions to foreclose real estate mortgages
§ 91:84	—Actions to recover damages for injuries to persons or property
§ 91:85	—Actions to recover damages for breach of contract
§ 91:86	—Actions to enforce noncontractual money obligations

- § 91:87 —Actions by or against common carriers
- § 91:88 —Catch-all for other personal matters
- §§ 91:89 to 91:91 *[Reserved]*
- § 91:92 Specific accrual provisions—Right to make entry or bring action to recover land
- § 91:93 —Mutual and open account current
- § 91:94 —Breach of warranty
- § 91:95 —Life insurance contracts
- § 91:96 —Installment contracts
- § 91:97 —Alimony payments
- § 91:98 —Professional malpractice
- § 91:99 — —Medical malpractice
- §§ 91:100, 91:101 *[Reserved]*
- § 91:102 Special problems—Injury or death from defective or unsafe improvements
- § 91:103 —Breach of warranty—Commercial transactions
- § 91:104 — —Consumer and personal injury actions
- § 91:105 —No-fault

## CHAPTER 92. DISCOVERY

- § 92:1 Introduction
- § 92:2 Selecting discovery device
- §§ 92:3 to 92:4 *[Reserved]*
- § 92:5 Availability of discovery
- § 92:6 Scope of discovery—Generally
- § 92:7 —Insurance agreements
- § 92:8 — —Insurance files
- § 92:9 —Trial preparation materials (work product)
- § 92:10 —Experts
- § 92:11 Effect of federal HIPAA requirements on disclosure of medical information
- § 92:12 The doctor-patient privilege
- § 92:13 *[Reserved]*
- § 92:14 Protective orders—Generally
- §§ 92:15 to 92:16 *[Reserved]*
- § 92:17 Sequence and timing—Generally
- § 92:18 —Time limit for discovery
- §§ 92:19 to 92:21 *[Reserved]*
- § 92:22 Duty to supplement responses—Generally
- § 92:23 —Implementing
- §§ 92:24 to 92:25 *[Reserved]*
- § 92:26 Stipulations regarding discovery procedure
- §§ 92:27 to 92:29 *[Reserved]*
- § 92:30 Filing of discovery materials
- § 92:31 Removal of discovery materials from file
- § 92:32 *[Reserved]*
- § 92:33 Sanctions—Generally
- § 92:34 —Signing of discovery requests, responses, and objections
- §§ 92:35 to 92:36 *[Reserved]*

## TABLE OF CONTENTS

§ 92:37	Sanctions—Motion for order compelling discovery—Generally
§ 92:38	— —Procedure
§ 92:39	— —Failure to comply with order
§§ 92:40 to 92:42	<i>[Reserved]</i>
§ 92:43	Sanctions—Direct imposition of sanctions without prior order
§§ 92:44 to 92:102	<i>[Reserved]</i>
§ 92:103	Interrogatories—Generally
§ 92:104	—Scope
§ 92:105	—Sample instructions
§ 92:106	—Advantages of interrogatories
§ 92:107	—Time for service
§ 92:108	—Answers and objections—Generally
§ 92:109	— —Option to produce business records
§ 92:110	—Failure to answer
§§ 92:111 to 92:112	<i>[Reserved]</i>
§ 92:113	Discovery of documents and things—Generally
§ 92:114	—Scope of discovery
§ 92:115	—From nonparties
§§ 92:116 to 92:118	<i>[Reserved]</i>
§ 92:119	Discovery of documents and things—Request to produce—Generally
§ 92:120	—Limitations on scope of disclosure imposed by particular statutes
§ 92:121	<i>[Reserved]</i>
§ 92:122	Discovery of documents and things—Failure to respond
§ 92:123	Physical and mental examination of persons—Generally
§ 92:124	—Report of findings
§ 92:125	—Refusal
§ 92:126	—In other tribunals
§§ 92:127 to 92:132	<i>[Reserved]</i>
§ 92:133	Request for admissions—Generally
§ 92:134	—Availability and scope
§ 92:135	—Answer or objection
§ 92:136	—Motion regarding answer or objection
§ 92:137	—Filing required
§ 92:138	—Effect of admission
§ 92:139	—Refusal to admit
§§ 92:140 to 92:142	<i>[Reserved]</i>
§ 92:143	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 to 93:7	<i>[Reserved]</i>
§ 93:8	Persons before whom depositions may be taken—Generally
§ 93:9	—In foreign countries
§ 93:10	—Disqualification

- §§ 93:11 to 93:13 *[Reserved]*
- § 93:14 Place of taking deposition
- § 93:15 Getting the witness there—Generally
- § 93:16 —Place of compliance
- §§ 93:17, 93:18 *[Reserved]*
- § 93:19 Getting there yourself
- § 93:20 *[Reserved]*
- § 93:21 Scope of examination—Generally
- § 93:22 —Objections and errors
- § 93:23 —Protective orders
- § 93:24 —Protective orders and the apex deposition rule
- § 93:25 Refusal of deponent to answer
- §§ 93:26 to 93:31 *[Reserved]*
- § 93:32 Record of examination
- §§ 93:33 to 93:35 *[Reserved]*
- § 93:36 Use of deposition—Generally
- § 93:37 —Objections to admissibility
- §§ 93:38 to 93:41 *[Reserved]*
- § 93:42 Depositions on written questions
- §§ 93:43 to 93:51 *[Reserved]*
- § 93:52 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 to 94:14 *[Reserved]*
- § 94:15 Setting up hearing—Scheduling and notices
- § 94:16 —Fees
- § 94:17 —Submission of documents and briefs
- §§ 94:18 to 94:24 *[Reserved]*
- § 94:25 The hearing
- §§ 94:26 to 94:28 *[Reserved]*
- § 94:29 The decision or award
- §§ 94:30, 94:31 *[Reserved]*
- § 94:32 Action on decision
- §§ 94:33, 94:34 *[Reserved]*
- § 94:35 Effect—When accepted
- § 94:36 —Rejection by a party—Generally
- § 94:37 — —Liability for costs
- § 94:38 — —Taxing costs
- §§ 94:39 to 94:44 *[Reserved]*

## TABLE OF CONTENTS

§ 94:45	Why mediation may be unfair and what to do about it
§§ 94:46 to 94:54	<i>[Reserved]</i>
§ 94:55	Medical malpractice mediation—Introduction
§ 94:56	—Panels
§§ 94:57, 94:58	<i>[Reserved]</i>
§ 94:59	Medical malpractice mediation—Setting up hearing—Scheduling and motions
§ 94:60	— —Fees
§ 94:61	— —Submission of documents and briefs
§§ 94:62 to 94:64	<i>[Reserved]</i>
§ 94:65	Medical malpractice mediation—The hearing
§§ 94:66 to 94:68	<i>[Reserved]</i>
§ 94:69	Medical malpractice mediation—The decision or award
§ 94:70	<i>[Reserved]</i>
§ 94:71	Medical malpractice mediation—Action on decision
§§ 94:72, 94:73	<i>[Reserved]</i>
§ 94:74	Medical malpractice mediation—Effect of mediation—When accepted
§ 94:75	— —Rejection by party
§ 94:76	Arbitration
§ 94:77	—Actions involving matters subject to arbitration
§ 94:78	—Compelling or seeking a stay of arbitration
§ 94:79	—Deposition; subpoena
§ 94:80	—Hearing
§ 94:81	—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, 95:5	<i>[Reserved]</i>
§ 95:6	Scope of conference
§ 95:7	—Effect of statements of parties during conference as binding or as admissions or as waivers of rights or defenses
§§ 95:8 to 95:11	<i>[Reserved]</i>
§ 95:12	Pretrial summary
§ 95:13	Miscellaneous orders
§§ 95:14 to 95:21	<i>[Reserved]</i>
§ 95:22	Relation to discovery

## CHAPTER 96. TRIALS

§ 96:1	Introduction
§ 96:2	Preparation for trial
§§ 96:3 to 96:11	<i>[Reserved]</i>
§ 96:12	Adjournments
§ 96:13	Disability of judge or attorney
§ 96:14	Consolidation for trial
§ 96:15	Separate trials
§ 96:16	Subpoenas

- § 96:17 Trial briefs
- §§ 96:18 to 96:21 *[Reserved]*
- § 96:22 The courtroom
- § 96:23 Trial by jury or by court—Generally
- § 96:24 —Sequence of trial
- § 96:25 Challenge to array
- §§ 96:26 to 96:31 *[Reserved]*
- § 96:32 Jury trials—Generally
- § 96:33 —Jury demand—Generally
- § 96:34 — —Specification of issues
- § 96:35 — —Waiver or withdrawal
- § 96:36 —Juror qualifications; personal qualification questionnaire
- § 96:37 —Impaneling jury—Voir dire
- § 96:38 — —Practice tips
- § 96:39 — —Challenges for cause
- § 96:40 — —Peremptory challenges
- § 96:41 —Attempts to influence jurors; liability of jurors; contempts by jurors
- § 96:42 Preliminary instructions
- § 96:43 Who opens
- § 96:44 Opening statements—Generally
- § 96:45 —Time allowed
- §§ 96:46 to 96:52 *[Reserved]*
- § 96:53 Evidence and witnesses
- § 96:54 —Videoconferencing
- § 96:55 Examination of witnesses—Generally
- § 96:56 —Preparation of witnesses
- § 96:57 —Calling hostile witnesses
- § 96:58 —Rebuttal witnesses
- § 96:59 Witness fees and mileage
- § 96:60 Agreements between parties as to evidence or proceedings
- §§ 96:61 to 96:65 *[Reserved]*
- § 96:66 Instructions to jury—Generally
- § 96:67 —Physical preparation
- § 96:68 *[Reserved]*
- § 96:69 Instructions to jury—Statement of issues and theory of case
- § 96:70 —Conference on instructions
- §§ 96:71 to 96:75 *[Reserved]*
- § 96:76 Final arguments
- §§ 96:77 to 96:79 *[Reserved]*
- § 96:80 Charge to jury—Generally
- § 96:81 —Objections
- § 96:82 —Additional instructions
- §§ 96:83 to 96:85 *[Reserved]*
- § 96:86 Verdicts—Generally
- § 96:87 —Rendering verdict
- § 96:88 —Special verdicts
- §§ 96:89, 96:90 *[Reserved]*



## TABLE OF CONTENTS

§ 96:91	Impeachment of juror's verdict
§§ 96:92, 96:93	<i>[Reserved]</i>
§ 96:94	Findings by court
§ 96:95	<i>[Reserved]</i>
§ 96:96	Motions for directed verdict and for judgment—Generally
§ 96:97	—Directed verdict or dismissal
§ 96:98	—Judgment notwithstanding verdict
§ 96:99	—New trial
§§ 96:100 to 96:105	<i>[Reserved]</i>
§ 96:106	Determining damages in personal injury cases—Introduction and definitions
§ 96:107	<i>[Reserved]</i>
§ 96:108	Determining damages in personal injury cases—Collateral source rule findings—Generally
§§ 96:109, 96:110	<i>[Reserved]</i>
§ 96:111	Determining damages in personal injury cases—Joint and several liability findings—Generally
§§ 96:112, 96:113	<i>[Reserved]</i>
§ 96:114	Determining damages in personal injury cases—Specific findings on damages—Generally
§§ 96:115, 96:116	<i>[Reserved]</i>
§ 96:117	Determining damages in personal injury cases—Form of judgment—Generally
§§ 96:118, 96:119	<i>[Reserved]</i>
§ 96:120	Determining damages in personal injury cases—When annuity contract required—Generally
§§ 96:121, 96:122	<i>[Reserved]</i>
§ 96:123	Determining damages in personal injury cases—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 to 97:10	<i>[Reserved]</i>
§ 97:11	Judgment in actions involving multiple claims or multiple parties
§ 97:12	Offers to stipulate to entry of judgment—Generally
§ 97:13	—Acceptance or rejection
§ 97:14	—Costs following rejection
§ 97:15	Relationship with case evaluation
§§ 97:16 to 97:20	<i>[Reserved]</i>
§ 97:21	Default judgments—Generally
§ 97:22	— —Notice of request for default judgment
§ 97:23	— —Entry of default by clerk upon affidavit
§ 97:24	— —Entry of default by motion to court upon hearing
§ 97:25	— —Notice of entry of default
§ 97:26	— —Effect of entry of default
§ 97:27	— —Setting aside default

§§ 97:28 to 97:30 *[Reserved]*

§ 97:31 Default judgments—Taking default judgment—Generally

§ 97:32 — —Notice of request

§ 97:33 — —Nonmilitary affidavits

§ 97:34 — —Hearing on default judgment motion

§ 97:35 — —Entry and effect

§§ 97:36, 97:37 *[Reserved]*

§ 97:38 Default judgments—Setting aside default or default judgment

§§ 97:39, 97:40 *[Reserved]*

§ 97:41 Declaratory judgments—Generally

§ 97:42 —Procedure

§ 97:43 —Other relief available

§§ 97:44 to 97:50 *[Reserved]*

§ 97:51 Entry of judgments and orders—Generally

§ 97:52 —Procedure for entry

§ 97:53 —Consent judgments

§ 97:54 Judgments and orders in particular types of actions—Support and domestic relations matters

§ 97:55 — —Entry of judgment or order

§ 97:56 —Miscellaneous other types of actions or proceedings

§ 97:57 Renewal of judgments

§ 97:58 Satisfaction of judgments

§§ 97:59 to 97:61 *[Reserved]*

§ 97:62 Judgment on bonds

§ 97:63 Transfer of judgments affecting real or personal property

§ 97:64 Installment judgments

## CHAPTER 98. COSTS

§ 98:1 Introduction

## CHAPTER 99. POSTTRIAL PROCEEDINGS

§ 99:1 Introduction

§§ 99:2 to 99:10 *[Reserved]*

§ 99:11 New trials—Generally

§ 99:12 —Grounds—Jury trials

§ 99:13 — —Nonjury trials

§ 99:14 —Time for motion

§ 99:15 —Affidavits in support of motion

§ 99:16 —Ruling on motion

§ 99:17 —Remittitur and additur

§ 99:18 *[Reserved]*

§ 99:19 New trials—In personal injury actions

§ 99:20 *[Reserved]*

§ 99:21 Relief from judgment or order—Generally

§ 99:22 —Grounds—Generally

§ 99:23 — —Clerical mistakes

§ 99:24 — —Defendant not personally notified

## TABLE OF CONTENTS

- §§ 99:25 to 99:30 *[Reserved]*
- § 99:31 Limitations on corrections of error
- §§ 99:32 to 99:40 *[Reserved]*
- § 99:41 Stay of proceedings—Generally
- § 99:42 —In trial court prior to appeal
- § 99:43 —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 to 100:10 *[Reserved]*
- § 100:11 Appeals by leave—Checklist for appellant
- § 100:12 —Checklist for appellee
- §§ 100:13 to 100:20 *[Reserved]*
- § 100:21 Appeals from administrative agencies

## 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 to 101:10 *[Reserved]*
- § 101:11 When appeal is of right
- § 101:12 Appeals as of right—Steps by appellant
- § 101:13 —Steps by appellee
- §§ 101:14 to 101:20 *[Reserved]*
- § 101:21 Appeals by leave—Steps by appellant
- § 101:22 —Steps by appellee
- §§ 101:23 to 101:27 *[Reserved]*
- § 101:28 Emergency appeals
- §§ 101:29, 101:30 *[Reserved]*
- § 101:31 Dismissal of appeals
- § 101:32 Miscellaneous relief in the court of appeals
- § 101:33 Original proceedings
- § 101:34 Motions—Generally
- § 101:35 —Administrative motions
- § 101:36 Resolution of conflicts in court of appeals decisions
- § 101:37 Waiver of right to appeal; preservation of issue for appeal
- § 101:38 Order or disposition

## CHAPTER 102. APPEALS TO THE SUPREME COURT

- § 102:1 Introduction
- §§ 102:2 to 102:51 *[Reserved]*
- § 102:52 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 to 103:10 *[Reserved]*
- § 103:11 Jurisdiction—Special divisions—Generally
- § 103:12 — —Magistrates
- § 103:13 — —Small claims
- § 103:14 — —Traffic
- § 103:15 — —Miscellaneous
- §§ 103:16 to 103:20 *[Reserved]*
- § 103:21 Venue—Generally
- § 103:22 *[Reserved]*
- § 103:23 Venue—Small claims
- § 103:24 —Location of court
- §§ 103:25 to 103:30 *[Reserved]*
- § 103:31 Parties and representation
- § 103:32 Forms of action
- § 103:33 Commencement of action
- § 103:34 Security for costs
- § 103:35 Pleadings—Generally
- § 103:36 —Answers and defenses
- § 103:37 Process
- § 103:38 Service of process
- § 103:39 Appearance
- §§ 103:40 *[Reserved]*
- § 103:41 Motion practice
- § 103:42 Pretrial and discovery
- § 103:43 Trials—Calendars
- § 103:44 —Adjournments
- § 103:45 —Consolidation for trial
- § 103:46 —Subpoenas; contempt
- § 103:47 —Recording
- § 103:48 —Small claims
- § 103:49 Trials—Specific cases
- §§ 103:50 *[Reserved]*
- § 103:51 Trials—Jury trials—Demand
- § 103:52 — —Verdict
- § 103:53 — —Small claims
- §§ 103:54 to 103:60 *[Reserved]*
- § 103:61 Judgments—Generally
- § 103:62 —Fees and costs
- §§ 103:63 to 103:65 *[Reserved]*
- § 103:66 Proceedings subsequent to judgment—Generally

## TABLE OF CONTENTS

- § 103:67 —Supplementary proceedings
- § 103:68 —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 to 104:10 *[Reserved]*
- § 104:11 Jurisdiction—Generally
- § 104:12 —Small claims
- § 104:13 —Remedy in federal court
- § 104:14 —Equitable jurisdiction
- §§ 104:15, 104:16 *[Reserved]*
- § 104:17 Venue—Generally
- § 104:18 —Transfer for lack of jurisdiction over subject matter
- § 104:19 —Consolidation with pending case
- § 104:20 *[Reserved]*
- § 104:21 Procedure—Generally
- § 104:22 —Pleading
- § 104:23 —Judgment on stipulated facts
- § 104:24 —Process
- § 104:25 —Parties
- § 104:26 —Discovery
- § 104:27 —Trials
- §§ 104:28 to 104:30 *[Reserved]*
- § 104:31 Judgments—Generally
- § 104:32 —Costs
- § 104:33 —Interest
- § 104:34 —Effect
- § 104:35 —Declaratory judgments
- §§ 104:36 to 104:40 *[Reserved]*
- § 104:41 Appeals—Generally

## CHAPTER 105. CLASS ACTIONS

- § 105:1 Introduction
- §§ 105:2 to 105:10 *[Reserved]*
- § 105:11 Requirements—Generally
- § 105:12 —Representation
- § 105:13 —Superiority to other methods
- §§ 105:14 to 105:20 *[Reserved]*
- § 105:21 Describing class—Generally
- § 105:22 —Out-of-state members
- §§ 105:23 to 105:25 *[Reserved]*
- § 105:26 Procedure for certification—Generally
- § 105:27 —Action by the court

- §§ 105:28 to 105:30 *[Reserved]*
- § 105:31 Notice to class members—Generally
- § 105:32 —Proposals regarding notice
- § 105:33 —Content of notice
- § 105:34 —Manner of giving notice
- § 105:35 —Cost of notice
- §§ 105:36 to 105:40 *[Reserved]*
- § 105:41 Opting out
- § 105:42 *[Reserved]*
- § 105:43 Intervening
- § 105:44 *[Reserved]*
- § 105:45 Statute of limitations
- § 105:46 *[Reserved]*
- § 105:47 Counterclaims
- §§ 105:48 to 105:50 *[Reserved]*
- § 105:51 Discovery
- §§ 105:52 to 105:54 *[Reserved]*
- § 105:55 Dismissal or compromise
- § 105:56 *[Reserved]*
- § 105:57 Judgments—Generally
- § 105:58 —Fluid recovery
- § 105:59 —Attorney fees
- §§ 105:60 to 105:64 *[Reserved]*
- § 105:65 Defendant classes
- §§ 105:66 to 105:70 *[Reserved]*
- § 105:71 Shareholder's derivative actions
- §§ 105:72 to 105:74 *[Reserved]*
- § 105:75 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

## TABLE OF CONTENTS

- § 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
- § 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



## TABLE OF CONTENTS

§ 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
- § 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

## TABLE OF CONTENTS

- § 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

## TABLE OF CONTENTS

§ 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
- § 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.

## TABLE OF CONTENTS

§ 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
§ 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



## TABLE OF CONTENTS

- § 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
- § 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

## TABLE OF CONTENTS

### 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 —Objectively manifested impairment *[Deleted]*
- § 125:13 —An important body function *[Deleted]*
- § 125:14 —Affecting the person’s general ability to lead his or her normal life—Background *[Deleted]*
- § 125:15 — —Statutory analysis *[Deleted]*
- § 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
- § 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

## TABLE OF CONTENTS

§ 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

## **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

## TABLE OF CONTENTS

- § 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
- § 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**