

Table of Contents

CHAPTER 1. NEW YORK WILLS EXPLAINED

- § 1:1 Overview
- § 1:2 Chapters and Appendices
- § 1:3 “Articles” which should be (and, in some cases, must be) components of every Will
- § 1:4 Using the forms in this book
- § 1:5 Formatting and nomenclature

CHAPTER 2. IMPORTANT ARTICLES FOR EVERY WILL

- § 2:1 Overview
- § 2:2 Exordium
- § 2:3 Pay debts and administration expenses
- § 2:4 Family identification
- § 2:5 Gifts of personal property
- § 2:6 Pre-residuary dispositive provisions
- § 2:7 Residuary estate dispositions
- § 2:8 Wills containing a trust—Protection against inadvertently violating rule against perpetuities
- § 2:9 Terminating trust to be added to remainderperson’s trust created under this Will
- § 2:10 General administrative powers of the estate’s fiduciaries
- § 2:11 General administrative powers of the estate’s fiduciaries: Digital Assets
- § 2:12 Fiduciary powers regarding business interests
- § 2:13 Fiduciary powers regarding tax matters
- § 2:14 Power in trust
- § 2:15 Estate tax payment responsibility
- § 2:16 Simultaneous death provisions
- § 2:17 Definition of terms used in the Will
- § 2:18 Appointments of fiduciaries—Guardian nominations
- § 2:19 —Trustee nominations
- § 2:20 —Executor nominations
- § 2:21 Bond waiver provisions
- § 2:22 Testimonium
- § 2:23 Attestation
- § 2:24 Affidavit of attesting witnesses or self-proving affidavit

CHAPTER 3. GENERAL CONSIDERATIONS REGARDING WILLS AND TESTAMENTARY TRUSTS

- § 3:1 Overview
- § 3:2 When is an outright bequest preferable to a disposition in trust?
- § 3:3 What are the different kinds of trusts and the purposes for which they are used?
- § 3:4 What tax considerations drive the selection of certain tax planning trusts?

- § 3:5 Federal estate and gift taxes
- § 3:6 New York State estate and gift taxes
- § 3:7 Generation-skipping tax matters
- § 3:8 —New York State generation-skipping transfer tax
- § 3:9 Special choices that must be considered when drafting testamentary trusts—
 - Pecuniary vs. fractional formulas
- § 3:10 —Spousal right of election
- § 3:11 —Choices regarding children's or grandchildren's trusts
- § 3:12 —Choices regarding the selection of fiduciaries
- § 3:13 Other significant matters regarding Wills—Same-sex marriages

CHAPTER 4. PLANNING WITH TRADITIONAL A/B TRUSTS AND WITH PORTABILITY

- § 4:1 The history of traditional A/B trust planning
- § 4:2 TRA 2010 and Deceased Spousal Unused Exclusion Amount Portability
- § 4:3 Traditional A/B planning, portability, or both?
- § 4:4 Advantages and disadvantages of both A/B and portability planning
- § 4:5 States with no estate tax
- § 4:6 "Decoupled" states with exemptions equivalent to the federal applicable exclusion amount
- § 4:7 "Decoupled" states with lower-than-federal exemptions
- § 4:8 QTIPs and portability
- § 4:9 Generation skipping transfer tax ("GSTT") considerations

CHAPTER 5. SIMPLE WILLS WHICH DO NOT CONTAIN TRUST PROVISIONS

I. WILL 5-1

- § 5:1 Form: Will 5-1: Residuary estate to spouse outright; if spouse does not survive or disclaims, residuary estate to children in separate outright shares, to grandchildren who are the issue of a deceased child in separate outright parts per stirpes

II. COMMENTARY TO WILL 5-1

A. GENERAL PRINCIPLES

- § 5:2 Essential features of testamentary plan
- § 5:3 When should this Will be used?
- § 5:4 Tax considerations

B. SPECIFIC MATTERS

- § 5:5 Shares passing to children and grandchildren are distributed outright and free from trust
- § 5:6 Grandchildren receive equal parts of their deceased parent's equal share
- § 5:7 Generation-skipping tax matters
- § 5:8 New York State Generation-Skipping Transfer Tax

TABLE OF CONTENTS

§ 5:9 Potential generation-skipping tax transfers under Will 5-1

III. WILL 5-2

§ 5:10 Form: Will 5-2: Where no spouse, residuary estate to children in separate outright shares, to grandchildren who are the issue of a deceased child in separate outright parts per stirpes

IV. COMMENTARY TO WILL 5-2

A. GENERAL PRINCIPLES

§ 5:11 Essential features of testamentary plan

§ 5:12 When should this Will be used?

B. SPECIFIC MATTERS

§ 5:13 Shares passing to children and grandchildren are distributed outright and free from trust

§ 5:14 Grandchildren receive equal parts of their deceased parent's equal share

§ 5:15 Generation-skipping tax matters

§ 5:16 —New York State generation-skipping transfer tax

§ 5:17 Potential GSTT transfers under Will 5-2

V. WILL 5-3

§ 5:18 Form: Will 5-3: Where no spouse, residuary estate to named individuals in unequal shares

VI. COMMENTARY TO WILL 5-3

A. GENERAL PRINCIPLES

§ 5:19 Essential features of testamentary plan

§ 5:20 When should this Will be used?

B. SPECIFIC MATTERS

§ 5:21 Shares passing to individual beneficiaries or to the issue of deceased beneficiaries are distributed outright and free from trust

§ 5:22 Generation-skipping tax matters

§ 5:23 —New York State generation-skipping transfer tax

§ 5:24 Potential GSTT transfers under Will 5-3

VII. WILL 5-4

§ 5:25 Form: Will 5-4: Residuary estate to spouse outright; if spouse does not survive, residuary estate in equal outright shares to testator's parents and to spouse's parents

VIII. COMMENTARY TO WILL 5-4

A. GENERAL PRINCIPLES

§ 5:26 Essential features of testamentary plan

- § 5:27 When should this Will be used?
- § 5:28 Tax considerations

B. SPECIFIC MATTERS

- § 5:29 Shares passing to parents and in-laws equally are distributed outright and free from trust
- § 5:30 The testator's siblings (and their issue) and the testator's spouse's siblings (and their issue) will receive equal parts of their deceased parents' equal share
- § 5:31 Generation-skipping tax matters
- § 5:32 New York State generation-skipping transfer tax
- § 5:33 Potential GSTT transfers under Will 5-4

CHAPTER 6. WILLS CONTAINING TRUST PROVISIONS WHICH ARE NOT TRADITIONAL APPLICABLE EXCLUSION OR MARITAL DEDUCTION TRUSTS

I. WILL 6-1

- § 6:1 Form: Will 6-1: Residuary estate to spouse outright; if spouse does not survive or disclaims, residuary estate to children under 35 in separate trusts, to grandchildren who are the issue of a deceased child in collective trusts by representation

II. COMMENTARY TO WILL 6-1

A. GENERAL PRINCIPLES

- § 6:2 Essential features of testamentary plan
- § 6:3 When should this Will be used?
- § 6:4 Tax considerations

B. SPECIFIC MATTERS

- § 6:5 Trusts created to receive the shares of issue
- § 6:6 Generation-skipping tax matters
- § 6:7 —New York State generation-skipping transfer tax
- § 6:8 Potential GSTT transfers under Will 6-1

III. WILL 6-2

- § 6:9 Form: Will 6-2: Where no spouse, residuary estate to children under 35 in separate trusts, to grandchildren who are the issue of a deceased child in collective trusts by representation

IV. COMMENTARY TO WILL 6-2

A. GENERAL PRINCIPLES

- § 6:10 Essential features of testamentary plan
- § 6:11 When should this Will be used?

TABLE OF CONTENTS

B. SPECIFIC MATTERS

- § 6:12 Trusts created to receive the shares of issue
- § 6:13 Generation-skipping tax matters
- § 6:14 New York State generation-skipping transfer tax
- § 6:15 Potential GSTT transfers under Will 6-2

V. WILL 6-3

- § 6:16 Form: Will 6-3: Residuary estate to spouse outright; if spouse does not survive or disclaims, residuary estate to children under 35 in separate trusts, and to grandchildren who are the issue of a deceased child in separate trusts by representation

VI. COMMENTARY TO WILL 6-3

A. GENERAL PRINCIPLES

- § 6:17 Essential features of testamentary plan
- § 6:18 When should this Will be used?
- § 6:19 Tax considerations

B. SPECIFIC MATTERS

- § 6:20 Trusts created to receive the shares of issue
- § 6:21 Generation-skipping tax matters
- § 6:22 —New York State generation-skipping transfer tax
- § 6:23 Potential GSTT transfers under Will 6-3

VII. WILL 6-4

- § 6:24 Form: Will 6-4: Where no spouse, residuary estate to children under 35 in separate trusts, and to grandchildren who are the issue of a deceased child in separate trusts by representation

VIII. COMMENTARY TO WILL 6-4

A. GENERAL PRINCIPLES

- § 6:25 Essential features of testamentary plan
- § 6:26 When should this Will be used?

B. SPECIFIC MATTERS

- § 6:27 Trusts created to receive the shares of issue
- § 6:28 Generation-skipping tax matters
- § 6:29 New York State generation-skipping transfer tax
- § 6:30 Potential GSTT transfers under Will 6-4

IX. WILL 6-5

- § 6:31 Form: Will 6-5: Residuary estate to sprinkle trust for spouse, children, and grandchildren

X. COMMENTARY TO WILL 6-5

A. GENERAL PRINCIPLES

- § 6:32 Essential features of testamentary plan
- § 6:33 When should this Will be used?
- § 6:34 Tax considerations

B. SPECIFIC MATTERS

- § 6:35 Residuary estate is gifted a sprinkle trust for the benefit of the spouse, children and grandchildren
- § 6:36 Trusts created to receive the shares of issue
- § 6:37 Generation-skipping tax matters
- § 6:38 New York State generation-skipping transfer tax
- § 6:39 Potential GSTT transfers under Will 6-5

XI. WILL 6-6

- § 6:40 Form: Will 6-6: Residuary estate to marital power of appointment trust; if spouse does not survive, residuary estate to children under 35 in separate trusts and to grandchildren who are the issue of a deceased child in collective trusts by representation

XII. COMMENTARY TO WILL 6-6

A. GENERAL PRINCIPLES

- § 6:41 Essential features of testamentary plan
- § 6:42 When should this Will be used?
- § 6:43 Tax considerations

B. SPECIFIC MATTERS

- § 6:44 Trusts created to receive the shares of issue
- § 6:45 Generation-skipping tax matters
- § 6:46 New York State generation-skipping transfer tax
- § 6:47 Potential GSTT transfers under Will 6-6

CHAPTER 7. TWO WILLS WITH FLEXIBLE QTIP PLANNING: THE “ONE-LUNG QTIP TRUST” AND THE “CLAYTON CONTINGENT QTIP TRUST”

I. WILL 7-1

- § 7:1 Form: Will 7-1: Residuary estate to “one-lung” QTIP trust

II. COMMENTARY TO WILL 7-1

A. GENERAL PRINCIPLES

- § 7:2 Essential features of testamentary plan

TABLE OF CONTENTS

- § 7:3 When should this Will be used?
- § 7:4 Tax considerations

B. SPECIFIC MATTERS

- § 7:5 IRS rules regarding qualified terminable interest property (QTIP) trusts
- § 7:6 New York State estate tax rule regarding the qualified terminable interest property (QTIP) trust election
- § 7:7 Trusts created to receive the shares of issue
- § 7:8 Generation-skipping tax matters
- § 7:9 New York State generation-skipping transfer tax
- § 7:10 Potential GSTT transfers under Will 7-1

III. WILL 7-2

- § 7:11 Form: Will 7-2: Residuary estate to Clayton contingent QTIP trust

IV. COMMENTARY TO WILL 7-2

A. GENERAL PRINCIPLES

- § 7:12 Essential features of testamentary plan
- § 7:13 The Clayton QTIP trust explained
- § 7:14 When should this Will be used?
- § 7:15 Tax considerations

B. SPECIFIC MATTERS

- § 7:16 IRS rules regarding qualified terminable interest property (QTIP) trusts
- § 7:17 New York State estate tax rule regarding the qualified terminable interest property (QTIP) trust election
- § 7:18 Trusts created to receive the shares of issue
- § 7:19 Generation-skipping tax matters
- § 7:20 New York State generation-skipping transfer tax
- § 7:21 Potential GSTT transfers under Will 7-2

CHAPTER 8. WILLS WITH TRADITIONAL PRE-RESIDUARY MARITAL DEDUCTION AND RESIDUARY APPLICABLE EXCLUSION DISPOSITIONS

I. WILL 8-1

- § 8:1 Form: Will 8-1: Pre-residuary pecuniary outright marital gift; residuary estate in bypass trust for spouse

II. COMMENTARY TO WILL 8-1

A. GENERAL PRINCIPLES

- § 8:2 Essential features of testamentary plan
- § 8:3 When should this Will be used?

§ 8:4 Tax considerations

B. SPECIFIC MATTERS

- § 8:5 Trusts created to receive the shares of issue
- § 8:6 Generation-skipping tax matters
- § 8:7 —New York State generation-skipping transfer tax
- § 8:8 Potential GSTT transfers under Will 8-1

III. WILL 8-2

§ 8:9 Form: Will 8-2: Pre-residuary pecuniary outright marital gift; residuary estate in sprinkle trust for spouse, children and grandchildren

IV. COMMENTARY TO WILL 8-2

A. GENERAL PRINCIPLES

- § 8:10 Essential features of testamentary plan
- § 8:11 When should this Will be used?
- § 8:12 Tax considerations

B. SPECIFIC MATTERS

- § 8:13 Income from the residuary trust is sprinkled among testator's spouse, children, and grandchildren in trustee's sole discretion
- § 8:14 Trusts created to receive the shares of issue
- § 8:15 Generation-skipping tax matters
- § 8:16 —New York State generation-skipping transfer tax
- § 8:17 Potential GSTT transfers under Will 8-2

V. WILL 8-3

§ 8:18 Form: Will 8-3: Pre-residuary pecuniary outright marital gift; residuary estate to children under 35 in separate trusts, to grandchildren who are the issue of a deceased child in collective trusts by representation

VI. COMMENTARY TO WILL 8-3

A. GENERAL PRINCIPLES

- § 8:19 Essential features of testamentary plan
- § 8:20 When should this Will be used?
- § 8:21 Tax considerations

B. SPECIFIC MATTERS

- § 8:22 Trusts created to receive the shares of issue
- § 8:23 Generation-skipping tax matters
- § 8:24 —New York State generation-skipping transfer tax
- § 8:25 Potential GSTT transfers under Will 8-3

TABLE OF CONTENTS

VII. WILL 8-4

§ 8:26 Form: Will 8-4: Pre-residuary pecuniary marital power of appointment trust; residuary estate to bypass trust for spouse

VIII. COMMENTARY TO WILL 8-4

A. GENERAL PRINCIPLES

§ 8:27 Essential features of testamentary plan
§ 8:28 When should this Will be used?
§ 8:29 Tax considerations

B. SPECIFIC MATTERS

§ 8:30 IRS rules regarding general power of appointment marital deduction trusts
§ 8:31 Trusts created to receive the trust remainder shares of issue
§ 8:32 Generation-skipping tax matters
§ 8:33 —New York State generation-skipping transfer tax
§ 8:34 Potential GSTT transfers under Will 8-4

IX. WILL 8-5

§ 8:35 Form: Will 8-5: Pre-residuary pecuniary marital power of appointment trust; residuary estate to sprinkle trust for spouse, children and grandchildren

X. COMMENTARY TO WILL 8-5

A. GENERAL PRINCIPLES

§ 8:36 Essential features of testamentary plan
§ 8:37 When should this Will be used?
§ 8:38 Tax considerations

B. SPECIFIC MATTERS

§ 8:39 IRS rules regarding general power of appointment marital deduction trusts
§ 8:40 Income from the residuary trust is sprinkled among testator's spouse, children, and grandchildren in trustee's sole discretion
§ 8:41 Trusts created to receive the trust remainder shares of issue
§ 8:42 Generation-skipping tax matters
§ 8:43 —New York State generation-skipping transfer tax
§ 8:44 Potential GSTT transfers under Will 8-5

XI. WILL 8-6

§ 8:45 Form: Will 8-6, Pre-residuary pecuniary marital power of appointment trust; residuary estate to children under 35 in separate trusts, to grandchildren who are the issue of a deceased child in collective trusts by representation

XII. COMMENTARY TO WILL 8-6

A. GENERAL PRINCIPLES

§ 8:46 Essential features of testamentary plan

- § 8:47 When should this Will be used?
- § 8:48 Tax considerations

B. SPECIFIC MATTERS

- § 8:49 IRS rules regarding general power of appointment marital deduction trusts
- § 8:50 Trusts created to receive the gifts to issue who are minors
- § 8:51 Generation-skipping tax matters
- § 8:52 —New York State generation-skipping transfer tax
- § 8:53 Potential GSTT transfers under Will 8-6

CHAPTER 9. WILLS WITH TRADITIONAL PRE-RESIDUARY APPLICABLE EXCLUSION DISPOSITIONS AND RESIDUARY MARITAL DEDUCTION DISPOSITIONS

I. WILL 9-1

- § 9:1 Form: Will 9-1: Pre-residuary pecuniary bypass trust for spouse; outright gift to spouse of residuary estate

II. COMMENTARY TO WILL 9-1

A. GENERAL PRINCIPLES

- § 9:2 Essential features of testamentary plan
- § 9:3 When should this Will be used?
- § 9:4 Tax considerations

B. SPECIFIC MATTERS

- § 9:5 Trusts created to receive the shares of issue
- § 9:6 Generation-skipping tax matters
- § 9:7 —New York State generation-skipping transfer tax
- § 9:8 Potential GSTT transfers under Will 9-1

III. WILL 9-2

- § 9:9 Form: Will 9-2: Pre-residuary pecuniary bypass trust for spouse; residuary marital power of appointment trust

IV. COMMENTARY TO WILL 9-2

A. GENERAL PRINCIPLES

- § 9:10 Essential features of testamentary plan
- § 9:11 When should this Will be used?
- § 9:12 Tax considerations

B. SPECIFIC MATTERS

- § 9:13 IRS rules regarding general power of appointment marital deduction trusts

TABLE OF CONTENTS

- § 9:14 Trusts created to receive the trust remainder shares of issue
- § 9:15 Generation-skipping tax matters
- § 9:16 —New York State generation-skipping transfer tax
- § 9:17 Potential GSTT transfers under Will 9-2

V. WILL 9-3

- § 9:18 Form: Will 9-3: Pre-residuary pecuniary sprinkle trust; residuary estate to outright marital gift

VI. COMMENTARY TO WILL 9-3

A. GENERAL PRINCIPLES

- § 9:19 Essential features of testamentary plan
- § 9:20 When should this Will be used?
- § 9:21 Tax considerations

B. SPECIFIC MATTERS

- § 9:22 Income from the pre-residuary trust is sprinkled among testator's spouse, children, and grandchildren in trustee's sole discretion
- § 9:23 Trusts created to receive the shares of issue
- § 9:24 Generation-skipping tax matters
- § 9:25 —New York State generation-skipping transfer tax
- § 9:26 Potential GSTT transfers under Will 9-3

VII. WILL 9-4

- § 9:27 Form: Will 9-4: Pre-residuary pecuniary sprinkle trust; residuary marital power of appointment trust

VIII. COMMENTARY TO WILL 9-4

A. GENERAL PRINCIPLES

- § 9:28 Essential features of testamentary plan
- § 9:29 When should this Will be used?
- § 9:30 Tax considerations

B. SPECIFIC MATTERS

- § 9:31 IRS rules regarding general power of appointment marital deduction trusts
- § 9:32 Income from the pre-residuary trust is sprinkled among testator's spouse, children, and grandchildren in trustee's sole discretion
- § 9:33 Trusts created to receive the trust remainder shares of issue
- § 9:34 Generation-skipping tax matters
- § 9:35 —New York State generation-skipping transfer tax
- § 9:36 Potential GSTT transfers under Will 9-4

IX. WILL 9-5

- § 9:37 Form: Will 9-5: Pre-residuary pecuniary trusts for issue; residuary estate to outright marital gift

X. COMMENTARY TO WILL 9-5

A. GENERAL PRINCIPLES

- § 9:38 Essential features of testamentary plan
- § 9:39 When should this Will be used?
- § 9:40 Tax considerations

B. SPECIFIC MATTERS

- § 9:41 Trusts created to receive the shares of issue
- § 9:42 Generation-skipping tax matters
- § 9:43 —New York State generation-skipping transfer tax
- § 9:44 Potential GSTT transfers under Will 9-5

XI. WILL 9-6

- § 9:45 Form: Will 9-6: Pre-residuary pecuniary trusts for issue; residuary marital power of appointment trust

XII. COMMENTARY TO WILL 9-6

A. GENERAL PRINCIPLES

- § 9:46 Essential features of testamentary plan
- § 9:47 When should this Will be used?
- § 9:48 Tax considerations

B. SPECIFIC MATTERS

- § 9:49 IRS rules regarding general power of appointment marital deduction trusts
- § 9:50 Trusts created to receive gifts to issue who are minors
- § 9:51 Generation-skipping tax matters
- § 9:52 —New York State generation-skipping transfer tax
- § 9:53 Potential GSTT transfers under Will 9-6

CHAPTER 10. WILLS WITH DISCLAIMER PROVISIONS

I. WILL 10-1

- § 10:1 Form: Will 10-1: Residuary estate to outright marital gift with disclaimer to sprinkle trust; disclaimed amounts to children under 35 in separate trusts, to grandchildren who are the issue of a deceased child in collective trusts by representation

II. COMMENTARY TO WILL 10-1

A. GENERAL PRINCIPLES

- § 10:2 Essential features of testamentary plan
- § 10:3 When should this Will be used?
- § 10:4 Tax considerations

TABLE OF CONTENTS

B. SPECIFIC MATTERS

- § 10:5 Elements of a tax qualified disclaimer
- § 10:6 Income from disclaimer trust is sprinkled among testator's spouse, children, and grandchildren in trustee's sole discretion
- § 10:7 Trusts created to receive the sprinkle trust remainder shares of issue
- § 10:8 If testator's spouse predeceases him or her, testator's residuary estate will pass to trusts created in the spouse's Will
- § 10:9 Be sure that testamentary trusts in predeceased spouse's Will conform to plan in testator's Will
- § 10:10 Generation-skipping tax matters
- § 10:11 —New York State generation-skipping transfer tax
- § 10:12 Potential GSTT transfers under Will 10-1

III. WILL 10-2

- § 10:13 Form: Will 10-2: Residuary estate to outright marital gift with disclaimer to sprinkle trust; disclaimed amounts to children under 35 in separate trusts, to grandchildren who are the issue of a deceased child in separate trusts by representation

IV. COMMENTARY TO WILL 10-2

A. GENERAL PRINCIPLES

- § 10:14 Essential features of testamentary plan
- § 10:15 When should this Will be used?
- § 10:16 Tax considerations

B. SPECIFIC MATTERS

- § 10:17 Elements of a tax qualified disclaimer
- § 10:18 Income from disclaimer trust is sprinkled among testator's spouse, children, and grandchildren in trustee's sole discretion
- § 10:19 Trusts created to receive the sprinkle trust remainder shares of issue
- § 10:20 If testator's spouse predeceases him or her, testator's residuary estate will pass to trusts created in the spouse's Will
- § 10:21 Be sure that testamentary trusts in predeceased spouse's Will conform to plan in testator's Will
- § 10:22 Generation-skipping tax matters
- § 10:23 —New York State generation-skipping transfer tax
- § 10:24 Potential GSTT transfers under Will 10-2

CHAPTER 11. SPOUSAL COMPANION WILLS OR WILLS WITH POUR-OVER PROVISIONS

I. WILL 11-1

- § 11:1 Form: Will 11-1: Residuary estate to outright marital gift; if spouse does not survive, pour-over to spouse's testamentary trusts

II. COMMENTARY TO WILL 11-1

A. GENERAL PRINCIPLES

- § 11:2 Essential features of testamentary plan
- § 11:3 When should this Will be used?
- § 11:4 Tax considerations

B. SPECIFIC MATTERS

- § 11:5 Pour over to trusts created in spouse's Will
- § 11:6 Trusts created to receive the shares of issue
- § 11:7 Generation-skipping tax matters
- § 11:8 —New York State generation-skipping transfer tax
- § 11:9 Potential GSTT transfers under Will 11-1

III. WILL 11-2

- § 11:10 Form: Will 11-2: Residuary estate pours-over to intervivos trust

IV. COMMENTARY TO WILL 11-2

A. GENERAL PRINCIPLES

- § 11:11 Essential features of testamentary plan
- § 11:12 When should this Will be used?
- § 11:13 Tax considerations

B. SPECIFIC MATTERS

- § 11:14 Authorization for testamentary disposition to trustee
- § 11:15 Generation-skipping tax matters
- § 11:16 —New York State generation-skipping transfer tax
- § 11:17 Potential GSTT transfers under Will 11-2

CHAPTER 12. WILLS WITH A PRIMARY OBJECTIVE OF CHARITABLE GIVING

I. WILL 12-1

- § 12:1 Form: Will 12-1: Pre-residuary gift of elective share to spouse; outright gift of residuary to charity

II. COMMENTARY TO WILL 12-1

A. GENERAL PRINCIPLES

- § 12:2 Essential features of testamentary plan
- § 12:3 When should this Will be used?

B. SPECIFIC MATTERS

- § 12:4 Entitlement to estate tax exemption

TABLE OF CONTENTS

- § 12:5 Identify the charitable organization accurately
- § 12:6 States statutory restrictions on charitable gifts
- § 12:7 Estate tax considerations: Deduction for outright charitable gift
- § 12:8 Status of proposal to tax gains on death

III. WILL 12-2

- § 12:9 Form: Will 12-2: Residuary estate to charitable remainder unitrust (“CRUT”) for spouse; if spouse does not survive, residuary outright to charity

IV. COMMENTARY TO WILL 12-2

A. GENERAL PRINCIPLES

- § 12:10 Essential features of testamentary plan
- § 12:11 When should this Will be used?

B. SPECIFIC MATTERS

- § 12:12 Entitlement to estate tax exemption
- § 12:13 Identify the charitable organization accurately
- § 12:14 Some states impose statutory restrictions on charitable giving
- § 12:15 Charitable remainder unitrust and New York right of election
- § 12:16 Estate tax considerations: Deduction for charitable remainder unitrust
- § 12:17 Status of proposal to tax gains on death
- § 12:18 Permissible versions of the charitable remainder unitrust
- § 12:19 Generation-skipping tax matters

V. WILL 12-3

- § 12:20 Form: Will 12-3: Residuary estate to charitable remainder annuity trust (CRAT) for spouse; if spouse does not survive, residuary estate outright to charity

VI. COMMENTARY TO WILL 12-3

A. GENERAL PRINCIPLES

- § 12:21 Essential features of testamentary plan
- § 12:22 When should this Will be used?

B. SPECIFIC MATTERS

- § 12:23 Entitlement to estate tax exemption
- § 12:24 Identify the charitable organization accurately
- § 12:25 Some states place statutory limitations on charitable giving
- § 12:26 Charitable remainder annuity trust and New York right of election
- § 12:27 Estate tax considerations
- § 12:28 Status of proposal to tax gains on death
- § 12:29 Generation-skipping tax matters

VII. WILL 12-4

- § 12:30 Form: Will 12-4: Residuary estate to charitable lead unitrust (“CLUT”)

VIII. COMMENTARY TO WILL 12-4

A. GENERAL PRINCIPLES

- § 12:31 Essential features of testamentary plan
- § 12:32 When should this Will be used?

B. SPECIFIC MATTERS

- § 12:33 Entitlement to estate tax exemption
- § 12:34 Identify the charitable organization accurately
- § 12:35 Some states impose statutory limitations on charitable giving
- § 12:36 Estate tax considerations: Deduction for charitable lead unitrust
- § 12:37 Other matters not addressed in Revenue Procedure 2008-46
- § 12:38 Status of proposal to tax gains on death
- § 12:39 Generation-skipping tax matters

IX. WILL 12-5

- § 12:40 Form: Will 12-5: Residuary estate to charitable lead annuity trust (“CLAT”)

X. COMMENTARY TO WILL 12-5

A. GENERAL PRINCIPLES

- § 12:41 Essential features of testamentary plan
- § 12:42 When should this Will be used?

B. SPECIFIC MATTERS

- § 12:43 Entitlement to estate tax exemption
- § 12:44 Identify the charitable organization accurately
- § 12:45 Some states impose statutory limitations on charitable giving
- § 12:46 Estate tax considerations: Deduction for charitable lead annuity trust
- § 12:47 Other matters not addressed in Revenue Procedure 2007-46
- § 12:48 Status of proposal to tax gains on death
- § 12:49 Generation-skipping tax matters

CHAPTER 13. OPTIONAL WILL CLAUSES

- § 13:1 Bequests, legacies and devises generally
- § 13:2 Education trust
- § 13:3 Estate tax provisions—DSUE
- § 13:4 Fractional funding formula
- § 13:5 Incentive trust
- § 13:6 Personal property—Selection of items by lot
 - Memorandum of gift
- § 13:8 Pet care trust (funded)
- § 13:9 Qualified domestic trust (QDOT)
- § 13:10 Real property trust for family vacation property
- § 13:11 Supplemental needs trust (special needs trust)

TABLE OF CONTENTS

- § 13:12 Trust provisions—Discretion exercised by one co-trustee
- § 13:13 —One co-trustee may act alone
- § 13:14 —Pecuniary language
- § 13:15 —Power of appointment (general)
- § 13:16 —Power of appointment (limited)
- § 13:17 —Power of principal invasion for child
- § 13:18 —Power of principal invasion for adult beneficiary
- § 13:19 —Power of withdrawal—5 and 5 power
- § 13:20 —Spendthrift trust provisions
- § 13:21 —Uneconomic termination
- § 13:22 Will provisions—Elective share planning
- § 13:23 —In terrorem clauses
- § 13:24 —Life insurance
- § 13:25 —Omission of beneficiary

APPENDICES

- Appendix A. Federal Estate Tax
- Appendix B. New York State Estate Tax and All States' Estate, Inheritance, and Generation-Skipping Tax Laws
- Appendix C. Generation-Skipping Tax—Discussion of Federal Law
- Appendix D. Same-Sex Marriages
- Appendix E. State Legislation Regarding Will Execution Requirements of Each State
- Appendix F. Who May be a Fiduciary? Eligibility Requirements and Preferences
- Appendix G. Uniform Gifts to Minors Act/Uniform Transfers to Minors Act
- Appendix H. Pour-Over Provisions in Wills
- Appendix I. Incorporations by Reference State Legislation and Case Law Summary
- Appendix J. Simultaneous Death Statutory Provisions
- Appendix K. Drafting for Trustee's Power to Adjust and for Trustee's Power to Make a Unitrust Election
- Appendix L. Beneficiary Designations for Life Insurance Plans and Employee Benefit Plans
- Appendix M. Elective Share, Dower, Curtesy, Homestead Allowances, Family Allowances, Forced Heir Statutes
- Appendix N. Rule Against Perpetuities
- Appendix O. Powers of Fiduciaries/State Rule Summary
- Appendix P. Footnotes
- Appendix Q. Quick Eye Chart For Wills

Table of Laws and Rules

Table of Cases

Index