Table of Contents

CHAPTER 1. THE ESTATE PLANNING PROCESS

A. INITIAL STEPS IN THE ESTATE PLANNING PROCESS

§ 1:1 Attorney liability for estate planning malpractice
§ 1:2 Initial client contact
§ 1:3 Necessary steps before first meeting
§ 1:4 —Conflict of interest check
§ 1:5 —Preliminary information gathering
§ 1:6 —Advice regarding fees for initial conference
§ 1:7 The initial meeting
§ 1:8 —Joint representation
§ 1:9 —Follow up estimate of fees and completion date
§ 1:10 Planning the estate, generally
§ 1:11 —Importance of estate tax issues
§ 1:12 —Necessity of complete information from client
§ 1:13 —State law issues must be considered
§ 1:14 —Certain elder law issues must be reviewed
§ 1:15 —Alternative property disposition without a will
§ 1:16 —Knowledge of correct drafting required
§ 1:17 —Disengagement at end of assignment

B. STATE LAW RESTRICTIONS ON TESTAMENTARY DISPOSITIONS

§ 1:18 Elective share considerations
§ 1:19 —Components of a decedent's net estate
§ 1:20 — —Testamentary substitute element of a net estate
§ 1:21 —Steps in elective share planning
§ 1:22 Community property
§ 1:23 —Spouses may have separate property
§ 1:24 —Presumption of community property
§ 1:25 —Community property rights in New York estates
§ 1:26 Rights of non-marital partners
§ 1:27 —Common law marriage
§ 1:28 —Implied or express contract for services rendered
§ 1:29 —Constructive trust
§ 1:30 —Cohabitation agreement suggested
§ 1:31 No restrictions per se on charitable giving
§ 1:32 Children and grandchildren may be disinherited
§ 1:33 Impact of divorce or annulment on provisions in dispositive document

§ 1:34 Effect of divorce on pension plan beneficiary designation
§ 1:35 Impact of marriage on existing will
§ 1:36 Impact of birth or adoption of a child on a will
§ 1:37 —Assisted reproduction and genetic material

C. PLANNING FOR DISABILITY: REPRESENTATIVE DECISION-MAKING

§ 1:38 Planning for disability—Overview
§ 1:39 —Client with diminished capacity
§ 1:40 —Power of attorney—Progress of recent legislation
§ 1:41 — —Particulars of legislation
§ 1:42 — —Ethical issues
§ 1:43 — —Digital assets
§ 1:44 —Health care proxies
§ 1:45 — —Proxy and power of attorney not to be combined
§ 1:46 — —Who may serve
§ 1:47 — —Alternative agent may be appointed
§ 1:48 — —Medical Orders for Life Sustaining Treatment (MOLST)
§ 1:49 — —Family Health Care Decisions Act
§ 1:50 —Medical Aid in Dying Legislation

D. PLANNING FOR DISABILITY: LONG TERM CARE

§ 1:51 Planning for disability—Long term care—Overview
§ 1:52 — —Medicaid planning by potential Medicaid applicant—"Medically needy" standard
§ 1:53 — — — —Resources the applicant may retain personally
§ 1:54 — — — —Income and resources the community spouse may retain
§ 1:55 — — — — —Income first rule
§ 1:56 — — — — —Substantial home equity
§ 1:57 — — — —Possibility of "lookback" disqualification—Penalty period
§ 1:58 — — — —Certain transfers do not cause ineligibility
§ 1:59 — — — —Transfers of homestead
§ 1:60 — — — —Possibility of "lookback" disqualification—Pre-DRA rule
§ 1:61 — — — — —DRA rule
§ 1:62 — — — —Implications of longer lookback period and start of penalty period
§ 1:63 — — —Testamentary estate planning implications of DRA

E. NEED FOR A WILL

§ 1:64 Alternate dispositions may obviate need for a will
§ 1:65 —Passing of non-probate assets by operation of law
§ 1:66 —Family exemption
§ 1:67 —Intestacy laws
§ 1:68 — —Intestate share reduced by amount of exempt assets

F. FORMS

§ 1:69 Sample family information questionnaire
§ 1:70 Sample confidential asset inventory: Shorter version
§ 1:71 Sample confidential asset inventory: Longer version
§ 1:72 Joint representation disclosure and consent for married couple
§ 1:73 Joint representation disclosure and consent for unmarried couple
§ 1:74 Engagement letter
§ 1:75 Disengagement letter
§ 1:76 Health care proxy
§ 1:77 Sample statutory short form general power of attorney (including modification for gifts)
§ 1:78 Sample form to authorize use of stored genetic material
§ 1:79 Sample form to declare parentage of child conceived by assisted reproduction [pursuant to amendment of EPTL § 4-13 (*effective February 15, 2021*)

CHAPTER 2. DRAFTING THE WILL

A. GENERAL CONSIDERATIONS

§ 2:1 Prior wills and codicils should be revoked
§ 2:2 Payment of debts and funeral expenses
§ 2:3 Funeral arrangements and burial wishes
§ 2:4 Religious services
§ 2:5 Monuments
§ 2:6 Perpetual care of cemetery plot
§ 2:7 Liquidity needs of estate
§ 2:8 Common disaster survivorship presumed by statute or will
§ 2:9 —Statutory presumption
§ 2:10 —Considerations for selection of survivorship presumption
§ 2:11 Testator's exercise of power of appointment
§ 2:12 Estate taxes apportioned by statute or testator's direction
§ 2:13 Taxes apportioned by statute or testator's direction—Drafting clause apportioning taxes to residuary estate
§ 2:14 — —Effect of clause on testator's intent
§ 2:15 — —Effect on residuary beneficiaries
§ 2:16 — —Effect on charitable and non-charitable beneficiaries
§ 2:17 *In terrorem* clauses
§ 2:18 —Effectiveness may be limited
§ 2:19 — —Discovery permitted under EPTL § 3-3.5 and SCPA § 1404
§ 2:20 — —Discovery where bequest to attorney
§ 2:21 — —Other actions not resulting in forfeiture
§ 2:22 —Drafting considerations

B. DISPOSITIVE PROVISIONS

§ 2:23 Nature of assets affects their disposition

§ 2:24 Real property
§ 2:25 —Devise to two or more children
§ 2:26 —Devise to a minor
§ 2:27 —Payment of mortgage on devised property
§ 2:28 —Inclusion of casualty insurance in a devise
§ 2:29 —Statutory presumptions regarding devise of property
§ 2:30 —Real property located in another state
§ 2:31 —Life estate interest
§ 2:32 Tangible personal property
§ 2:33 —Dispositive language must be carefully chosen
§ 2:34 —Precatory gifts may be advisable
§ 2:35 —Disposition to minors
§ 2:36 Forgiveness of debt
§ 2:37 Legacies
§ 2:38 —General legacies
§ 2:39 —Specific legacies
§ 2:40 — —Probate/Non-probate assets
§ 2:41 —Demonstrative legacies
§ 2:42 —Ademption of legacies
§ 2:43 — —Will should be updated following sale of major asset
§ 2:44 —Payment of legacies when estate is insufficient
§ 2:45 —Conditional legacies
§ 2:46 —Testamentary gifts to attorney-drafter discouraged
§ 2:47 Provision for spouse
§ 2:48 Use of testamentary trusts for younger beneficiaries
§ 2:49 —Common or "Pot" trust for children
§ 2:50 —Separate trusts for children
§ 2:51 —Selection of guardian for minor children
§ 2:52 — —Where parents are separated or divorced
§ 2:53 Trusts for disabled or elderly persons
§ 2:54 —Four specific issues must be considered
§ 2:55 — —Invasion of corpus for health and support costs
§ 2:56 — —Trust's effect on availability of other resources
§ 2:57 — —"Trigger trust" provisions of EPTL § 7-3.1
§ 2:58 — —Availability of trust principal to creditors
§ 2:59 —Availability of a Supplemental Needs Trust (SNT)
§ 2:60 — —Requirements for SNT creation

C. SELECTION, AUTHORITY AND LIABILITY OF FIDUCIARIES

§ 2:61 Selection of executors and trustees
§ 2:62 —Bond may be required
§ 2:63 —Limitation of powers of trustee/trust beneficiary
§ 2:64 —Beneficiaries may receive power to remove trustee
§ 2:65 — —Tax consequences to beneficiaries may follow
§ 2:66 —Trust protector
§ 2:67 —Attorney-drafter may be designated executor
§ 2:68 — —Client's choice must not be influenced

§ 2:69 Statutory powers of fiduciaries
§ 2:70 —Grant of powers in will may be advisable
§ 2:71 — —Potential need for grant of business powers
§ 2:72 — —Potential need for grant of environmental powers
§ 2:73 —Power to adjust and unitrust option—Income and principal definitions
§ 2:74 — —Background
§ 2:75 —Power to adjust
§ 2:76 —Unitrust option
§ 2:77 Statutory liability of fiduciaries for investments
§ 2:78 —Investments made before 1/1/95
§ 2:79 —Investments made on or after 1/1/95
§ 2:80 — —List of factors in investment decisions
§ 2:81 — —Diversification
§ 2:82 — —Proving compliance with the act
§ 2:83 — — —Initial review
§ 2:84 — — —Subsequent reviews
§ 2:85 —Public policy precludes insulating fiduciaries
§ 2:86 —Will or trust modification of responsibility or liability
§ 2:87 —Investments made on or after 1/1/95—Proving compliance with the act—Hiring investment advice
§ 2:88 —Liability for acts of investment agents and advisors

D. ATTESTATION

§ 2:89 Attestation
§ 2:90 —Self-proving affidavit is recommended

E. FORMS

§ 2:91 Separate trusts for children
§ 2:92 Grant of fiduciary powers—Long form
§ 2:93 Grant of business powers
§ 2:94 Grant of environmental powers
§ 2:95 Insurance, annuities and retirement funds
§ 2:96 Trustee discretionary power

CHAPTER 3. LIVING TRUSTS

A. USE OF REVOCABLE TRUST FOR ASSET DISPOSITION AT DEATH

§ 3:1 Many types of revocable trusts
§ 3:2 —One is the living trust
§ 3:3 Benefits of using living trusts for asset disposition
§ 3:4 —Elimination or minimization of probate
§ 3:5 —Continuity of asset management
§ 3:6 —Confidentiality in asset disposition
§ 3:7 —Potential savings in costs of administration
§ 3:8 — —Legal fees

§ 3:9 — —Executor commissions
§ 3:10 Benefits of using living trust for asset disposition—Potential savings in costs of administration—Filing fees
§ 3:11 Neutral or negative effects of using living trusts
§ 3:12 —No estate tax advantage
§ 3:13 —Creditors may reach trust assets
§ 3:14 —Higher start-up legal costs
§ 3:15 —Retention of document trail is necessary

B. DRAFTING AND FUNDING A LIVING TRUST

§ 3:16 Certain considerations are specific to living trusts
§ 3:17 Choice of trustee
§ 3:18 Items affecting administration during grantor's life
§ 3:19 —Power to amend or revoke should be retained
§ 3:20 —Investment authority may be retained
§ 3:21 —Provision for payment of income and principal needed
§ 3:22 — —Estate taxation of gifts within three years of death
§ 3:23 —Standard needed for determining capacity of grantor
§ 3:24 Use of revocable trust and pour-over will
§ 3:25 —Requirements for valid pour-over will
§ 3:26 — —Amendment or termination of trust may affect will
§ 3:27 —Documents' tax apportionment provisions must not conflict
§ 3:28 —Legacies best paid out of trust
§ 3:29 —Trustee may require compensation for executor duties
§ 3:30 Income tax considerations
§ 3:31 —Fiduciary income tax filing requirements
§ 3:32 —Unique tax characteristics of trust at death
§ 3:33 — —Taxation of trust as part of estate—Overview
§ 3:34 — — —Mechanics
§ 3:35 Considerations for joint revocable trust
§ 3:36 —Each contributing spouse must have full revocation power
§ 3:37 —Two subtrusts needed for sufficiently specific records
§ 3:38 —Issues raised by death of one grantor
§ 3:39 —Advantage may not outweigh tax issues
§ 3:40 Considerations for self-trusteed revocable trusts
§ 3:41 —Merger doctrine may defeat trust
§ 3:42 — —Potential cures for merger problem
§ 3:43 —Trustee/beneficiary and EPTL § 10-10.1
§ 3:44 —Attestation
§ 3:45 Living trust may and should specify choice of law
§ 3:46 Grantor's capacity to make valid trust
§ 3:47 Attestation of trust used with pour-over will
§ 3:48 Funding the living trust
§ 3:49 Amending or restating the revocable trust
§ 3:50 Investment advisor

C. RELATED FLORIDA LEGISLATIVE CHANGE

§ 3:51 Revisions to legal fee structure for handling estates

§ 3:52 —Court can decrease statutory "ordinary compensation"
§ 3:53 —Court can award "extraordinary compensation"
§ 3:54 —Effect of corporate fiduciary as trustee

D. FORMS

§ 3:55 Living Trust—Simple disposition to children
§ 3:56 —Marital deduction gift to spouse's living trust
§ 3:57 Client instruction letter for funding living trust
§ 3:58 Amendment of revocable trust
§ 3:59 Restatement of revocable trust
§ 3:60 Investment advisor provisions

CHAPTER 4. EXECUTION OF A WILL

A. OVERVIEW OF DUE EXECUTION

§ 4:1 Due execution—Generally
§ 4:2 —Essential elements
§ 4:3 —Will signed in foreign jurisdiction
§ 4:4 Burden to establish due execution
§ 4:5 —Strict construction of statute
§ 4:6 Necessity for a writing
§ 4:7 —Holographic wills
§ 4:8 —Nuncupative wills
§ 4:9 Date not required
§ 4:10 —Date of will and attestation clause may be different

B. REQUIREMENTS FOR TESTATOR'S VALID EXECUTION

§ 4:11 Execution of will during COVID-19 pandemic—Virtual witnessing authorized
§ 4:12 Testator must sign at end of will
§ 4:13 —Requirement designed to prevent fraudulent changes
§ 4:14 —Potential problem with "do-it-yourself" wills
§ 4:15 —Missing page of will does not compel denial of probate
§ 4:16 —Blindness or other disability not a bar
§ 4:17 —Where testator's native language is not English
§ 4:18 Substitutes allowed for testator's signature—Testator may sign with initial, mark, name or fingerprint
§ 4:19 — —Higher burden of proof where testator marks will
§ 4:20 — —Attestation clause should note use of mark
§ 4:21 —Agent may sign for testator
§ 4:22 — —Beneficiary may serve as agent
§ 4:23 — —Testator's mark and agent's signature not advised
§ 4:24 Testator must sign or acknowledge before two witnesses
§ 4:25 —Acknowledgment must identify signature
§ 4:26 "Publication" by testator required

§ 4:27 —Substantial compliance with publication requirement is sufficient
§ 4:28 —Publication may be inferred
§ 4:29 — —Agent may "publish" on testator's behalf

C. REQUIREMENTS FOR VALID ATTESTATION

§ 4:30 Attestation clause
§ 4:31 Attesting witness defined
§ 4:32 —Capacity to act as an attesting witness
§ 4:33 —No statutory requirements to qualify as a witness
§ 4:34 —Choose witnesses younger than testator
§ 4:35 —Attorney/witness
§ 4:36 —Use of a beneficiary may pose later problems
§ 4:37 — —Beneficiary/witness cannot avoid statute
§ 4:38 — —Beneficiary/witness may take equivalent distributee share
§ 4:39 — —Tax clause constitutes beneficial interest
§ 4:40 —Notary as attesting witness
§ 4:41 Two witnesses are required but three are recommended
§ 4:42 Testator must ask the witnesses to sign
§ 4:43 —Inference that testator asked witnesses to sign
§ 4:44 Witnesses must see testator's signature
§ 4:45 —Impact if witnesses cannot recall signature
§ 4:46 Witnesses must sign at the end
§ 4:47 —Witnesses' signatures should follow testator's
§ 4:48 —Signature on self-proving affidavit may suffice
§ 4:49 Witnesses may print signatures
§ 4:50 Witnesses not required to affix their address
§ 4:51 Witnesses need not sign simultaneously with testator
§ 4:52 —Witnesses must sign within 30 days of each other
§ 4:53 — —Presumption that witnesses signed within 30 days
§ 4:54 —Witnesses' authority to sign ends at testator's death

D. ESTABLISHING DUE EXECUTION

§ 4:55 Presumptions of due execution
§ 4:56 —Attorney supervised execution
§ 4:57 —Effect of attestation clause
§ 4:58 —Attestation clause does not save improper execution
§ 4:59 —Effect of attestation clause in an ancient document
§ 4:60 Self-proving affidavits
§ 4:61 —Option to sign self-proving affidavit at later date
§ 4:62 —Affidavit not sufficient if objections are raised
§ 4:63 Where attesting witnesses forget the execution ceremony
§ 4:64 Where attesting witnesses disagree
§ 4:65 Where recollection of attesting witnesses conflicts or witness refuses to testify
§ 4:66 —Lack of testimony by second witness insufficient to defeat due execution
§ 4:67 —Doctrine of substantial compliance

E. RECOMMENDED PRACTICES

§ 4:68 Short cuts not advised
§ 4:69 Home vs. office executions
§ 4:70 Consistent procedures advised for will ceremonies
§ 4:71 —Attorney should supervise execution
§ 4:72 — —Danger when attorney does not supervise execution
§ 4:73 —Testator should first read all documents
§ 4:74 —Engage the witnesses in the ceremony
§ 4:75 —Guide the testator carefully through vital steps
§ 4:76 —Guide the witnesses through vital steps
§ 4:77 —Do not make written changes to will
§ 4:78 — —Interlineations presumed made after execution
§ 4:79 —Obliteration causing partial revocation—Kent Rule
§ 4:80 —Execute other documents after will execution
§ 4:81 —Staple the will together
§ 4:82 —Copying the will
§ 4:83 — —Duplicate originals
§ 4:84 — —Wills in two languages
§ 4:85 Executions that involve special circumstances
§ 4:86 —Testator who has a physical or mental disability
§ 4:87 —Testator who is hospitalized
§ 4:88 —Videotaping the will execution
§ 4:89 —Testator referred from a bank
§ 4:90 —Testator referred from an attorney/beneficiary
§ 4:91 Wills signed simultaneously by spouses
§ 4:92 Memorandum of execution
§ 4:93 —Information contained in the memorandum
§ 4:94 — —Detail any unusual event
§ 4:95 Avoid codicils
§ 4:96 —Execution of more than one codicil
§ 4:97 Safeguarding the will
§ 4:98 —Bank vault if bank is executor
§ 4:99 —Safe deposit box if testator has deputy
§ 4:100 —Surrogate's Court as repository of last resort
§ 4:101 —The attorney's will vault
§ 4:102 Pros and cons of retaining prior wills
§ 4:103 —Older will may serve as potential fallback
§ 4:104 —Older will could discourage challengers

CHAPTER 5. THE TRANSFER TAX SYSTEM

A. TRANSFER TAX PRINCIPLES

§ 5:1 Federal transfer taxes applicable to U.S. citizens and residents
§ 5:2 —Tax liability of nonresident, non-U.S. citizens
§ 5:3 Exemptions applicable to annual and lifetime transfers
§ 5:4 —Annual gift tax exclusion
§ 5:5 —Lifetime allowance against gift tax

§ 5:6 — —Potential for transfer tax savings with lifetime allowance for couples
§ 5:7 Gift taxes
§ 5:8 Estate taxes
§ 5:9 —Pre-death transfers subject to estate tax
§ 5:10 —Planning can reduce estate taxes
§ 5:11 "Unified" system applicable to gift and estate taxes
§ 5:12 —Unified tax rate structure
§ 5:13 Economic Growth and Tax Relief Reconciliation Act of 2001
§ 5:14 Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010
§ 5:15 American Taxpayer Relief Act of 2012
§ 5:16 Federal transfer taxes following enactment of the Tax Cuts and Jobs Act of 2017 and the One Big Beautiful Bill Act (2025)
§ 5:17 "Unified" system applicable to gift and estate taxes—Tax rate structure before 1977

B. COMPUTING ESTATE AND GIFT TAXES

§ 5:18 Steps in computing tax liability
§ 5:19 Step 1: Calculating the "gross gift" or "gross estate"
§ 5:20 Step 2: Subtractions yield "taxable gift" or "taxable estate"
§ 5:21 Step 3: Additions yield "taxable amount"
§ 5:22 Step 4: Computation of "tentative tax"
§ 5:23 Step 5: Subtraction yields "gross tax"
§ 5:24 Step 6: Subtraction of credits yields "net tax"
§ 5:25 Sample computation of estate tax liability

C. ASSETS INCLUDED IN THE GROSS ESTATE

§ 5:26 Assets owned by decedent
§ 5:27 —Property located in another country
§ 5:28 —Valuation of assets
§ 5:29 — —Conservation easement
§ 5:30 — — —Land which qualifies for conservation easement
§ 5:31 — —Alternate value defined
§ 5:32 Certain transfers made within three years before death
§ 5:33 —Gifts within three years generally not included
§ 5:34 — —Background on transfers before 1977
§ 5:35 — — —Rules changed again in 1981
§ 5:36 —Transfers within three years that are included
§ 5:37 — —Inclusion of taxes paid on gifts
§ 5:38 — — —Includes federal tax on any "net gift"
§ 5:39 — — —Transferee tax liability
§ 5:40 — — —State gift taxes not included
§ 5:41 — —Inclusion of life insurance transfers
§ 5:42 — —Property formerly subject to retained powers
§ 5:43 Assets in which the decedent retained an interest
§ 5:44 —Retained right to possession, enjoyment or income

§ 5:45 —Transfers not fully effective until death
§ 5:46 —Revocable transfers
§ 5:47 Retirement plan benefits
§ 5:48 —Evolution of treatment of annuity payments
§ 5:49 —Grandfather provisions for earlier retirees
§ 5:50 Assets held as jointly owned property
§ 5:51 Assets for which decedent had general power of appointment
§ 5:52 —Dates relevant to general powers
§ 5:53 — —General powers created before 10/22/42
§ 5:54 — —General powers created after 10/21/42
§ 5:55 —Power not general if limited by ascertainable standard
§ 5:56 —Power not general if exercisable only with creator
§ 5:57 —Releases and lapses of a general power of appointment
§ 5:58 —Lapse of a general power of appointment—Exception to lapse provisions
§ 5:59 —Withdrawal powers based on *Crummey* decision
§ 5:60 Life insurance proceeds
§ 5:61 —Test for inclusion of life insurance
§ 5:62 —Planning may exclude life insurance from estate
§ 5:63 Transfers for insufficient consideration
§ 5:64 —Relinquishment of marital rights
§ 5:65 Strategies to avoid including transfers in gross assets
§ 5:66 —Brief life of "enterprise" provision
§ 5:67 —Chapter 14
§ 5:68 — —Freeze transactions
§ 5:69 — —GRITs, GRATs and GRUTs
§ 5:70 — — —QPRTs in popular literature
§ 5:71 Strategies to avoid including transfers in gross assets

D. DEDUCTIONS ALLOWED FROM THE GROSS ESTATE

§ 5:72 Marital deduction: amount of deduction
§ 5:73 Marital deduction: definition of spouse
§ 5:74 Marital deduction—Previous marital deduction rules
§ 5:75 — —The original marital deduction
§ 5:76 — —Initial change: Tax Reform Act of 1976
§ 5:77 — —Passage of the current, full marital deduction
§ 5:78 — — —QTIP trusts
§ 5:79 —Wills before 9/12/81 and the "maximum marital deduction"
§ 5:80 —Allowable gifts to surviving spouse who is U.S. citizen
§ 5:81 —Qualified Domestic Trust for noncitizens spouses
§ 5:82 Charitable deduction
§ 5:83 —Outright gifts to charities must be identifiable
§ 5:84 —Split interest gifts
§ 5:85 — —Only specific split interest gifts qualify
§ 5:86 Funeral and administration expenses
§ 5:87 New closely held business interest deduction—Now repealed
§ 5:88 Deductibility of debts

E. ADDITIONS MADE TO DETERMINE TAXABLE AMOUNT

§ 5:89 "Adjusted taxable gifts"
§ 5:90 —No taxable gifts from 1977 or later added at this stage
§ 5:91 Establishing gift tax value for estate tax purposes

F. SUBTRACTIONS ALLOWED FROM THE TENTATIVE TAX

§ 5:92 Reductions for gift taxes
§ 5:93 —Split gifts

G. CREDITS THAT REDUCE THE GROSS TAX

§ 5:94 Summary of available credits
§ 5:95 —Credits available on federal estate tax returns
§ 5:96 —Credits available on gift tax returns
§ 5:97 Unified Credit
§ 5:98 Portability of Unified Credit
§ 5:99 Unified credit—Use of the Unified Credit
§ 5:100 Unified Credit—Use of the Unified Credit—Gifts made between 9/8/76 and 12/31/76
§ 5:101 Unified credit—Use of the Unified Credit—Background of the Unified Credit
§ 5:102 State death tax credit/deduction for state death tax
§ 5:103 States with "pick-up tax" tied to state death tax credit
§ 5:104 State death tax credit—States with rates higher than "pick-up" schedules
§ 5:105 —No equivalent credit for gift taxes
§ 5:106 Gift tax credit
§ 5:107 Prior transfer tax credit
§ 5:108 —Obtaining the prior transfer tax credit
§ 5:109 Foreign death tax credit
§ 5:110 —Canadian tax on appreciation at death

H. TRANSFER TAXES APPLICABLE TO NON-U.S. CITIZENS

§ 5:111 Nonresident aliens' property subject to federal estate tax
§ 5:112 —Property must be in United States
§ 5:113 — —"Portfolio interest" exemption applied strictly
§ 5:114 — —Other exempt items
§ 5:115 —Special rules for expatriates
§ 5:116 — —Taxation of expatriates' estates
§ 5:117 — —Gift tax rules for expatriates
§ 5:118 Rates and credits for noncitizens and nonresidents
§ 5:119 —Background
§ 5:120 Deductions

CHAPTER 6. MARITAL DEDUCTION PLANNING

A. OPTIMAL USE OF THE MARITAL DEDUCTION AND UNIFIED CREDIT

§ 6:1 Definition of spouse for marital deduction purposes
§ 6:2 Unified Credit available at death
§ 6:3 —Gifts made before 9/8/76
§ 6:4 —Gifts between 9/8/76 and 12/31/76
§ 6:5 —Gifts made on or after 1/1/77
§ 6:6 Marital deduction amount
§ 6:7 —Includible in the decedent's estate
§ 6:8 —Passing from the decedent
§ 6:9 — —Spouse's interest based on settlement agreement
§ 6:10 —Marital deduction vehicles for U.S. citizens
§ 6:11 —Marital deduction vehicles for non-U.S. citizens
§ 6:12 Interplay of Unified Credit and marital deduction
§ 6:13 Overview of portability of Unified Credit
§ 6:14 Implications of portability
§ 6:15 Interplay of Unified Credit and marital deduction—Use of a disclaimer trust or credit shelter trust
§ 6:16 — —New York estate tax
§ 6:17 —Options for a disclaimer trust or credit shelter trust
§ 6:18 —Options for a credit shelter trust—Provisions for trust income
§ 6:19 —Options for a credit shelter trust and disclaimer trust—Provisions for trust principal
§ 6:20 — —Lifetime power of appointment limited by ascertainable standard
§ 6:21 —Options for a credit shelter trust—Lifetime power limited by ascertainable standard—Ascertainable standard
§ 6:22 — — —Importance of ascertainable standard
§ 6:23 —Options for a credit shelter trust and disclaimer trust—Lifetime power limited to $5,000 or 5% per year
§ 6:24 —Options for a credit shelter trust—Testamentary limited power of appointment

B. SELECTING ASSETS FOR A CREDIT SHELTER TRUST OR A DISCLAIMER TRUST

§ 6:25 Selecting assets for a credit shelter trust or disclaimer trust
§ 6:26 Assets must be available
§ 6:27 —Changing beneficiary designations
§ 6:28 —Life estate in residence
§ 6:29 — —Alternative to life estate interest
§ 6:30 Avoid placing IRD assets in a credit shelter trust or a disclaimer trust
§ 6:31 —Minimizing IRD in credit shelter trusts and disclaimer trust—IRD property in marital trust
§ 6:32 Use appreciating assets if possible

C. SELECTING THE MARITAL DEDUCTION VEHICLE

§ 6:33 Marital deduction vehicles for U.S. citizen spouses
§ 6:34 Outright gifts
§ 6:35 Life estates with general power of appointment
§ 6:36 —Qualifying income interests
§ 6:37 — —Life income interest
§ 6:38 — —Income from entire property or a specific portion
§ 6:39 — —Beneficial enjoyment
§ 6:40 —No power of appointment to any other person
§ 6:41 —General power of appointment by spouse
§ 6:42 Annuities with general power of appointment
§ 6:43 Qualified Terminable Interest Property (QTIP) trusts
§ 6:44 —"Terminable interest" defined
§ 6:45 — —"Six-month survivorship" exception
§ 6:46 — —"Exhausted interest" exception
§ 6:47 — —General power of appointment exception
§ 6:48 —Trusts for which a QTIP election can be made
§ 6:49 — —New York Only QTIP election
§ 6:50 — —Interplay of QTIP rules with qualified plan/IRA rules
§ 6:51 — —Stub income
§ 6:52 — —No power of appointment to any other person
§ 6:53 —Life estates for which QTIP election can be made
§ 6:54 — —Deduction not invalidated by "note in trust"
§ 6:55 —Effect of QTIP election
§ 6:56 — —"Disposition" of trust or property defined
§ 6:57 Charitable remainder unitrusts and annuity trusts
§ 6:58 —No double deduction
§ 6:59 —Potential alternative to other marital trust vehicles
§ 6:60 — —Qualified contingency
§ 6:61 — — —Valuation of qualified contingency
§ 6:62 Estate trusts

D. USE OF QUALIFIED DOMESTIC TRUSTS BY NON-U.S. CITIZENS

§ 6:63 Deduction available with Qualified Domestic Trust (QDOT)
§ 6:64 —No QDOT counterpart in gift tax law
§ 6:65 Requirements for establishing a QDOT
§ 6:66 —Regulations applicable to QDOTs
§ 6:67 Estate tax on QDOT distributions
§ 6:68 —Hardship distributions
§ 6:69 —Nature of estate tax under I.R.C. § 2056A
§ 6:70 — —Rate of tax
§ 6:71 — —When tax is due
§ 6:72 — —Prior tax credit
§ 6:73 Making a timely QDOT election
§ 6:74 —New York rule when no federal return filed
§ 6:75 —Transfers to a QDOT trust by the spouse

§ 6:76 —Final regulations on annuity payments

E. DEFINING THE MARITAL DEDUCTION SHARE

§ 6:77 Formula used to express marital deduction share
§ 6:78 —Size of the credit shelter trust
§ 6:79 —Possible strategy where state estate tax exceeds credit
§ 6:80 Placement of the credit shelter trust
§ 6:81 —Advantage to defining credit shelter first
§ 6:82 —Advantage to defining marital portion first
§ 6:83 Choosing between fraction of residue or pecuniary amount
§ 6:84 —Marital share as fraction of residue
§ 6:85 —Marital share defined as true worth pecuniary amount
§ 6:86 — —Disadvantages of true worth pecuniary method
§ 6:87 — — —Recognition of gain
§ 6:88 — — —Recognition of loss
§ 6:89 — —Risk of market decline
§ 6:90 — — —Drafting advantage in use of fractional share
§ 6:91 — — —Potential advantages of pecuniary formula
§ 6:92 — —Need to watch for changes in value of estate assets
§ 6:93 Hybrid pecuniary option
§ 6:94 Consequences of treatment of administration expenses charged to income

F. FORMS

§ 6:95 Portability provision
§ 6:96 Disclaimer QDOT will
§ 6:97 Rollover agreement
§ 6:98 Agreement to pay tax on installments
§ 6:99 Optional unitrust provisions

CHAPTER 7. THE USE OF DISCLAIMERS

A. REASONS FOR DISCLAIMERS

§ 7:1 The disclaimer concept
§ 7:2 —Rights frequently disclaimed in estates practice
§ 7:3 —Non-tax reasons for disclaimers
§ 7:4 — —Property interests with clean-up liability
§ 7:5 — —Inability to enjoy property interest
§ 7:6 Federal tax liens
§ 7:7 Disclaimers must meet federal and state requirements

B. FEDERAL DISCLAIMER REQUIREMENTS

§ 7:8 Regulations changed effective January 1, 1977
§ 7:9 —Interests created before 1977
§ 7:10 — —Potential difficulty in applying pre-1977 rules today
§ 7:11 Federal requirements for "qualified disclaimers"

§ 7:12 —Interests created from 1977 through 1981
§ 7:13 —Interests created in or after 1982
§ 7:14 Disclaimer must identify interest and be signed
§ 7:15 Delivery required to transferor of the interest
§ 7:16 Timeliness gauged by nine-month rule
§ 7:17 —Nine months run from the date a gift is completed
§ 7:18 —Property passing by exercise or lapse of a general power
§ 7:19 —Property passing by QTIP trust
§ 7:20 —Property passing by exercise or lapse of a limited power
§ 7:21 —Property passing by joint tenancy
§ 7:22 — —Bank accounts
§ 7:23 — —Stocks and bonds
§ 7:24 — —Real property—Case law
§ 7:25 — —IRS general rule on disclaimer
§ 7:26 Disclaimer must be before acceptance of property or benefits
§ 7:27 —Recipient must accept disclaimed property voluntarily
§ 7:28 Entire interest, or entire portion, must be disclaimed
§ 7:29 —Separate interests, defined
§ 7:30 —Income disclaimed, right to principal retained
§ 7:31 —Principal disclaimed, right to income retained
§ 7:32 —Appointment power disclaimed, income/principal retained
§ 7:33 —Specific assets from bequest or trust disclaimed
§ 7:34 —Pecuniary amount may be disclaimed
§ 7:35 —Undivided fractional interests may be disclaimed
§ 7:36 Property must pass without direction
§ 7:37 —May not pass in another form, unless to spouse

C. NEW YORK DISCLAIMER REQUIREMENTS

§ 7:38 Basic requirements for disclaimers in New York
§ 7:39 Necessity to file/Effect of filling: Valid disclaimer is irrevocable
§ 7:40 Delivery of disclaimer
§ 7:41 No timeliness exception for beneficiaries under 21
§ 7:42 —Court discretion to extend filing time
§ 7:43 No timeliness exception—Court discretion to extend filing time
§ 7:44 Property interests that may be disclaimed
§ 7:45 Disclaimer by guardian or personal representative
§ 7:46 Disclaimer by attorney-in-fact
§ 7:47 Effect of disclaimer

D. USE OF DISCLAIMERS IN ESTATE PLANNING AND ADMINISTRATION

§ 7:48 Tax reasons for disclaiming property interests
§ 7:49 —Planned disclaimers
§ 7:50 —Unplanned disclaimers

E. FORMS

§ 7:51 Notice of renunciation, petition and supporting affidavit

§ 7:52 Living trust with disclaimer provisions

CHAPTER 8. THE GENERATION-SKIPPING TRANSFER TAX

A. OVERVIEW OF THE GENERATION-SKIPPING TRANSFER TAX

§ 8:1 Nature of the Generation-Skipping Transfer tax
§ 8:2 —Evolution of GST tax
§ 8:3 —Objective of the GST tax
§ 8:4 Applicable to most transfers after 9/25/85
§ 8:5 —Not applicable to some wills executed before 10/22/86
§ 8:6 —Not applicable to some trusts irrevocable on 9/25/85
§ 8:7 — —Trusts includable in transferor's estate not eligible
§ 8:8 —Not applicable to some revocable direct skip trusts
§ 8:9 Ongoing exemption from the GST tax
§ 8:10 —Time-limited $2 million per grandchild exemption

B. TRANSACTIONS COVERED BY THE GST TAX

§ 8:11 Taxable events
§ 8:12 —Taxable terminations
§ 8:13 — —Skip person
§ 8:14 — —Generations defined in terms of relationship
§ 8:15 — — —Non-lineal generations defined by 25-year intervals
§ 8:16 —Taxable distributions
§ 8:17 —Taxability of direct skips
§ 8:18 Effect on interest in a trust
§ 8:19 Use of income or principal to satisfy obligations
§ 8:20 —Exception for support obligations
§ 8:21 —Interests for postponement or avoidance disregarded
§ 8:22 Persons responsible for paying the tax
§ 8:23 Tax computation based on flat rate
§ 8:24 —Computation for taxable terminations
§ 8:25 —Computation for taxable distributions
§ 8:26 —Computation for direct skips
§ 8:27 —Credit for state GST tax
§ 8:28 Assignment of persons to generations
§ 8:29 —Lineal descendants
§ 8:30 —Non-lineal descendants
§ 8:31 —Resolving potential assignments to multiple generations
§ 8:32 —Assignment of entities to generations

C. COMPUTATION AND EFFECT OF THE INCLUSION RATIO

§ 8:33 Role of the "inclusion ratio" and "applicable fraction"
§ 8:34 —Computation of the applicable fraction

§ 8:35 —Computation of the inclusion ratio
§ 8:36 Valuation of property for determining inclusion ratio
§ 8:37 —Special rules for charitable lead annuity trusts
§ 8:38 —Options during estate tax inclusion period (ETIP)
§ 8:39 — —Treatment of spousal interests in ETIP
§ 8:40 Interplay of inclusion ratio and the GST exemption
§ 8:41 Effect of ratio on multiple skips

D. RULES AFFECTING EXCLUSIONS FROM GST TAXES

§ 8:42 Exclusions from GST coverage
§ 8:43 Exclusion for "grandfathered" trusts can be lost
§ 8:44 —Additions to a grandfathered trust
§ 8:45 —Constructive additions to a grandfathered trust—Powers of appointment
§ 8:46 — —Modification of trust
§ 8:47 —Constructive addition through assumption of liability
§ 8:48 Exemptions governed by predeceased child rule
§ 8:49 Exemption if no taxable termination occurs
§ 8:50 Exemption for transfers eligible for the annual exclusion
§ 8:51 Exclusion of medical and tuition expense gifts

E. PLANNING TO USE THE GST EXEMPTIONS OF BOTH SPOUSES

§ 8:52 Challenge to drafters
§ 8:53 Lifetime gifts
§ 8:54 —Potential drawback in strategy
§ 8:55 — —Annual exclusion gifts as an alternative
§ 8:56 Testamentary planning
§ 8:57 —Building up the "GST estate" of the surviving spouse
§ 8:58 —The three-trust will
§ 8:59 Reverse QTIP election
§ 8:60 —Reformation of a QTIP trust
§ 8:61 Impact of predeceased child rule

F. ALLOCATION OF THE GST EXEMPTION

§ 8:62 Exemption applicable only to taxable transfers
§ 8:63 Valuation of transferred property
§ 8:64 —Exceptions to valuation rule
§ 8:65 Effective date of allocation
§ 8:66 Timely allocations by donor
§ 8:67 —Late allocations by donor
§ 8:68 Timely allocation by executor
§ 8:69 —Late allocation by executor
§ 8:70 — —Transfers included in donor's gross estate
§ 8:71 — —Transfers not included in donor's gross estate
§ 8:72 — —Exception for ETIP property and charitable lead annuity trusts

§ 8:73 Deemed allocation during lifetime
§ 8:74 —Expansion of automatic allocation of GST exemption under EGTRRA
§ 8:75 —Electing out of deemed allocation rules during lifetime
§ 8:76 Deemed allocation at death
§ 8:77 —Electing out of deemed allocation rules at death
§ 8:78 Retroactive allocations of GST exemption
§ 8:79 Severance of trusts
§ 8:80 Relief provisions
§ 8:81 Application of Chapter 13 to nonresident aliens

G. FORMS

§ 8:82 Three-trust will

CHAPTER 9. CHARITABLE PLANNING

A. CHARITABLE GIVING

§ 9:1 State law considerations
§ 9:2 Limitations on charitable gifts
§ 9:3 —Appropriation rules
§ 9:4 Tax apportionment rules
§ 9:5 Drafting considerations
§ 9:6 —Charitable name
§ 9:7 —Restrictions on charitable use
§ 9:8 —Cy pres
§ 9:9 Forms of charitable gifts
§ 9:10 —Outright gifts
§ 9:11 —Life estates
§ 9:12 —Split interest trusts
§ 9:13 — —Charitable remainder trusts
§ 9:14 — —Charitable lead trusts
§ 9:15 — —Requirements for validity and tax advantages
§ 9:16 —Charitable gift annuities
§ 9:17 —Contributions

B. TAX DEDUCTIONS FOR CHARITABLE GIFTS

§ 9:18 Potential deductions available
§ 9:19 Estate tax deduction
§ 9:20 —Requirements for deductible interest in property
§ 9:21 — —Undivided portion
§ 9:22 —Gift must pass from decedent
§ 9:23 — —Compromise agreements
§ 9:24 — —Precatory language
§ 9:25 — —Passing by reason of disclaimers
§ 9:26 — —Passing due to complete termination of power to consume
§ 9:27 — —Passing to charities selected by another
§ 9:28 — —Any condition or power must be remote

§ 9:29 —Included in the decedent's estate
§ 9:30 —Passing to a qualified charity
§ 9:31 — —Treatment of administrative expenses
§ 9:32 — —Cemetery associations
§ 9:33 — —No political activity
§ 9:34 Gift tax deduction
§ 9:35 Income tax deduction
§ 9:36 —Qualifying charities for income tax purposes
§ 9:37 —Reduction rules for Short-term capital gain
§ 9:38 Use of IRA to make charitable contributions
§ 9:39 Income tax deduction—Reduction rules for long-term capital gain
§ 9:40 — —Any property given to private foundations
§ 9:41 — — —Expiration of exception for appreciated stock
§ 9:42 — —Tangible personal property given for unrelated use
§ 9:43 — —Step down in value
§ 9:44 —Percentage limitations for cash gifts
§ 9:45 — —Public charity
§ 9:46 — —Non-public charity
§ 9:47 —Percentage limitation rules for non-cash gifts
§ 9:48 —Alternate minimum tax

C. CHARITABLE REMAINDER TRUSTS

§ 9:49 Charitable remainder trusts defined
§ 9:50 —Primary use for trust
§ 9:51 Payout requirements
§ 9:52 —Annuity provision
§ 9:53 —Unitrust interest
§ 9:54 —Lesser of income or unitrust interest
§ 9:55 —Lesser of income or unitrust interest with make-up provision
§ 9:56 —lesser of income or unitrust interest with make-up provision—Classification of capital gains
§ 9:57 — — —IRS concern with technique
§ 9:58 — —FLIP unitrusts
§ 9:59 Common rules for unitrusts and annuity trusts—Permissible payout recipients
§ 9:60 —Permissible payout recipients—Persons
§ 9:61 —Waiver of right of election
§ 9:62 —Permissible payout recipients—Persons—Trusts
§ 9:63 — — —Payments to trusts for disabled persons
§ 9:64 — — —Class of individuals
§ 9:65 — — — —Grantor cannot have power over trustee
§ 9:66 — —Cancellation of survivor recipient's interest
§ 9:67 —Availability of charitable deductions for annuity or unitrust interests payable to charity
§ 9:68 —Permissible remainder beneficiaries
§ 9:69 —Minimum remainder

§ 9:70 —Permissible remainder beneficiaries—Changing the charitable remainder beneficiary
§ 9:71 — —Limiting the remainder recipient to public charities
§ 9:72 —Term of annuity or unitrust interest
§ 9:73 —Term of annuity or unitrust interest—Qualified contingencies
§ 9:74 —Final annuity and unitrust payout
§ 9:75 —Estate taxes
§ 9:76 —Amount includible in grantor's gross estate
§ 9:77 —Private foundation rules/excise taxes
§ 9:78 —Excise taxes—Effect of state law
§ 9:79 —Unrelated business taxable income
§ 9:80 —Division of charitable remainder trust
§ 9:81 —Tier rules/ordering rules
§ 9:82 —Timing of payments
§ 9:83 —Medicare contribution tax
§ 9:84 —Non-marketable assets
§ 9:85 —Anti-abuse regulation
§ 9:86 —Section 2702 valuation rules
§ 9:87 Six factors in selecting the best payout format
§ 9:88 —Concern with inflation
§ 9:89 —Desire for certainty about the amount of payment
§ 9:90 —Expected yield of assets in trust
§ 9:91 —Impact of payout form on charitable deduction
§ 9:92 — —Skewed valuation results
§ 9:93 — —Federal midterm rate
§ 9:94 —Whether future additions will be made to the trust
§ 9:95 —Whether the trust has specific payout targets
§ 9:96 5% probability test
§ 9:97 —Language to prevent violating the 5% test
§ 9:98 Funding a charitable remainder trust
§ 9:99 Terminating a charitable remainder trust
§ 9:100 IRS-approved forms

D. CHARITABLE LEAD TRUSTS

§ 9:101 Three types of charitable lead trusts
§ 9:102 Regular lead trust
§ 9:103 —Payout
§ 9:104 — —Permissible measuring life
§ 9:105 —Private foundation rules/excise taxes
§ 9:106 —Medicare contribution tax
§ 9:107 —No grantor retained interest
§ 9:108 —Primary planning use is to leverage transfers
§ 9:109 — —GST implications of lead annuity trusts
§ 9:110 Grantor lead trust
§ 9:111 —No yearly income tax deduction
§ 9:112 —Amount recaptured on death of grantor
§ 9:113 Common law lead trust

§ 9:114 —Use of a common law lead trust
§ 9:115 —Key to drafting a common law lead trust
§ 9:116 —Medicare contribution tax
§ 9:117 Testamentary charitable lead annuity trust
§ 9:118 Irrevocable inter vivos charitable lead trust

E. FORMS

§ 9:119 Testamentary charitable remainder annuity trust with one life
§ 9:120 Intervivos charitable remainder unitrust with two lives, consecutive
§ 9:121 Sample *inter vivos* nongrantor charitable lead annuity trust

CHAPTER 10. LIFETIME GIFTS

A. ADVANTAGES OF LIFETIME GIFTS

§ 10:1 Non-tax reasons for making lifetime gifts
§ 10:2 —Love and affection
§ 10:3 —Business continuation planning
§ 10:4 — —Smooth transition
§ 10:5 — —Reduction in sibling conflict
§ 10:6 — —Bolster employee morale
§ 10:7 — —Improve trade, customer and banking relationships
§ 10:8 — —Avoiding bank guarantees
§ 10:9 —Effect of medical costs on savings
§ 10:10 — —Medicare limits
§ 10:11 — —Medicaid for the "medically needy"
§ 10:12 Tax reasons for lifetime gifts

B. TAX-ORIENTED GIFT-GIVING STRATEGIES

§ 10:13 IRS standards for written tax advice
§ 10:14 —Circular 230—Monetary penalties
§ 10:15 — —2014 amendments
§ 10:16 — —Covered opinion rules
§ 10:17 — —Relation of Circular 230 to preparer penalty provision of I.R.C. (§ 6694)
§ 10:18 — —Implications for estate planning and estate administration
§ 10:19 Transfers that generate neither gift nor estate taxes
§ 10:20 —Annual exclusion for "present interest" gifts
§ 10:21 —History of present interest exclusion
§ 10:22 —Potentially significant effect of gifts
§ 10:23 —Types of gifts in trust that qualify for exclusion
§ 10:24 —Gifts of tuition expenses
§ 10:25 — —Definition of tuition limited
§ 10:26 — —No limit to deductibility
§ 10:27 —Qualified state tuition programs (529 Plans)

§ 10:28 —Gifts to provide medical care
§ 10:29 — —Definition of eligible medical expenses
§ 10:30 ABLE Accounts
§ 10:31 Gifts of appreciating assets
§ 10:32 —Effect of removing appreciating assets from the estate
§ 10:33 — —"Adjusted taxable gifts" vs "otherwise included gifts"
§ 10:34 — — —Gifts "otherwise included in the gross estate"
§ 10:35 Leveraging strategies
§ 10:36 —Annual gift tax exclusion as leveraging tool
§ 10:37 —Insurance policies as leveraging tool
§ 10:38 —Leverage from charitable deductions
§ 10:39 — —Charitable remainder trusts
§ 10:40 — — —Gift of income is discounted to actuarial value
§ 10:41 — — —Remainder is income tax charitable deduction
§ 10:42 — — —Appreciated assets escape gain recognition
§ 10:43 — —Charitable lead trusts
§ 10:44 — — —Leverage in a charitable lead trust
§ 10:45 —Leverage from retained interests for a term of years
§ 10:46 — —Gift taxation of retained income interests
§ 10:47 —Leverage from minority interest discounts
§ 10:48 —Leverage opportunities from actuarial tables
§ 10:49 — —Mortality factor
§ 10:50 — — —Limitations on use of tables
§ 10:51 — —Interest rate factor
§ 10:52 — — —Federal midterm rate now used to value transfers
§ 10:53 Transfers that generate neither gift nor estate taxes—Challenge to use of family limited partnerships and limited liability companies—Annual exclusion
§ 10:54 —Challenge to use of family limited partnerships and limited liability companies
§ 10:55 Hard to value assets: Transfers with defined values
§ 10:56 Advantages of gift tax payments over estate tax payments
§ 10:57 —Estate tax is "tax inclusive"
§ 10:58 —Gift tax is "tax exclusive"
§ 10:59 — —Exception for gift taxes within three years of death
§ 10:60 — — —"Net gift" also affected
§ 10:61 —Tax-saving potential of tax exclusive gifts

C. POTENTIAL TAX DISADVANTAGES IN MAKING GIFTS

§ 10:62 Tax reasons not to make lifetime gifts
§ 10:63 Loss of step-up in basis at death
§ 10:64 Potential loss of redemption advantages under I.R.C. § 303
§ 10:65 —The 35% test for an "adjusted gross estate"
§ 10:66 —Effect of gifts on 35% test
§ 10:67 Potential loss of benefits from valuation rules for qualified real property
§ 10:68 Potential loss of option to pay estate tax in installments

D. PREPARATION OF THE FEDERAL GIFT TAX RETURN

§ 10:69 The federal gift tax
§ 10:70 —History of the federal gift tax
§ 10:71 Gifts subject to tax
§ 10:72 —Expatriate defined
§ 10:73 Calculation of the federal gift tax
§ 10:74 Treatment of split gifts
§ 10:75 Current rate schedule
§ 10:76 —History of unified rate structure
§ 10:77 —Unified Credit
§ 10:78 Exclusions and deductions from the gift tax
§ 10:79 Valuation of gifts
§ 10:80 —Gifts of remainder interest
§ 10:81 —Recapitalization—Gifts
§ 10:82 —Gifts of life estate interests
§ 10:83 —Penalty for undervaluation
§ 10:84 — —Penalty for gifts made before 1990
§ 10:85 Gift tax filing requirements
§ 10:86 Filing requirements—Short form
§ 10:87 —Timely filing
§ 10:88 — —Penalty for late filing
§ 10:89 — —Preparer penalties—Overview of prior law
§ 10:90 — — —2007 change in law
§ 10:91 — — —2008 change in law
§ 10:92 — — —Regulatory announcements
§ 10:93 — — —Overview of regulations
§ 10:94 — — —Notion of preparer
§ 10:95 — — —Significance of positions
§ 10:96 — — —Returns and claims for refund
§ 10:97 — — —Notions of substantial portion or substantial preparation
§ 10:98 — — —Date return is prepared
§ 10:99 — — —Verification of information
§ 10:100 — — —Undisclosed positions
§ 10:101 — — —Disclosed positions
§ 10:102 — — —Reasonable basis positions
§ 10:103 — — — —Signing tax return preparers
§ 10:104 — — — —Nonsigning tax return preparers
§ 10:105 — — —Requirements for advice (signing and nonsigning preparers)
§ 10:106 — — —Reasonable cause/good faith
§ 10:107 — — —Compensation included in penalty determination
§ 10:108 — — —Proposed amendment of Circular 230
§ 10:109 — — —Some observations
§ 10:110 Chart of gift tax rates

E. NEW YORK STATE GIFT AND GST TAX

§ 10:111 New York State gift tax

§ 10:112 Generation-skipping transfer tax

CHAPTER 11. IRREVOCABLE LIFETIME TRUSTS

A. INSURANCE TRUSTS

§ 11:1 Life insurance policies
§ 11:2 —Estate tax
§ 11:3 —Third party ownership—Beneficiary designation
§ 11:4 — —Selecting the third party
§ 11:5 — — —Disadvantages of choosing spouse
§ 11:6 — — —Option to name children as third party owners
§ 11:7 — — —Advantages of naming an irrevocable insurance trust
§ 11:8 Insurance trusts
§ 11:9 —Option to create "survivorship" insurance trust
§ 11:10 Funding the trust with existing policies
§ 11:11 Sale of policies between trusts
§ 11:12 Funding the trust with existing policies—Transfer for value rule may apply if loan is outstanding
§ 11:13 — —Transfer for value rules
§ 11:14 — — —Transfers by gift normally exempt
§ 11:15 — — —Rule when policy is subject to a loan
§ 11:16 Trust may apply for the insurance policy
§ 11:17 —Preferable for trust to obtain policy
§ 11:18 Four options on funds to pay insurance premiums
§ 11:19 Options on funds to pay insurance premiums—*Crummey* strategy to qualify payments as tax-exempt gifts
§ 11:20 Four options on funds to pay insurance premiums—Notice requirement for *Crummey* power to be effective
§ 11:21 — —Time to exercise power
§ 11:22 — —Minor donees
§ 11:23 — —Donees who are not current trust beneficiaries
§ 11:24 — —Assets must be available for notice to be effective
§ 11:25 — —Importance of good record-keeping
§ 11:26 —Income tax consequences of *Crummey* powers
§ 11:27 —Gift tax consequences of lapsing *Crummey* powers
§ 11:28 — —General power of appointment
§ 11:29 — —Limited power of appointment
§ 11:30 — —Hanging power
§ 11:31 — — —IRS position
§ 11:32 — —Multiple trusts
§ 11:33 Options on funds to pay insurance premiums—Split dollar arrangement for payment for premiums
§ 11:34 —Split dollar arrangement—Guidance before 2003 regulations
§ 11:35 — —Overview of 2003 regulations
§ 11:36 — —Ownership test as to applicable regime
§ 11:37 — —Economic benefit regime

§ 11:38 — —Loan regime
§ 11:39 — —Grandfather rules
§ 11:40 —Implications of deferred compensation rules
§ 11:41 —Reverse split dollar arrangement
§ 11:42 —Charitable split dollar arrangement
§ 11:43 Dispositive provisions
§ 11:44 —Backup marital deduction provision
§ 11:45 — —No authority opposing provision
§ 11:46 — —Distinct from contingent marital deduction
§ 11:47 —Segregating power of appointment amounts from marital trust
§ 11:48 —Pour-over to other trusts
§ 11:49 —Advisable to avoid reciprocal trust doctrine
§ 11:50 —Disposition of survivorship insurance trusts
§ 11:51 Generation-skipping considerations

B. TRUSTS WITH RETAINED BENEFITS FOR GRANTOR

§ 11:52 Grantor Retained Interest Trusts (GRITS) in general
§ 11:53 —Planning with GRITS prior to October 8, 1990
§ 11:54 —Chapter 14: general rule
§ 11:55 — —Family members
§ 11:56 Trusts excluded from Chapter 14 rules
§ 11:57 —Normal valuation rules used
§ 11:58 —Estate and gift tax consequences of PRTs, QPRTs, GRATs, GRUTs
§ 11:59 — —Use of beneficial interest in spouse to reduce taxable gift for GRAT or GRUT
§ 11:60 — —Amount includible in gross estate
§ 11:61 —GST tax consequences of PRTs, QPRTs, GRATs, GRUTs
§ 11:62 —Proposals to limit GRATs
§ 11:63 —Sale to intentionally defective grantor trust
§ 11:64 — —Necessity for trust to have other assets
§ 11:65 — —Income tax issues
§ 11:66 — —Other planning issues

C. TRUSTS FOR PERSONAL RESIDENCE

§ 11:67 Requirements for Personal Residence Trusts (PRTs)
§ 11:68 —PRT not practically viable
§ 11:69 Qualified Personal Residence Trusts (QPRTs)
§ 11:70 —Two QPRTs may be established by a person
§ 11:71 —Option to create joint QPRT
§ 11:72 —Mortgaged property
§ 11:73 —No commutation
§ 11:74 —Payment of taxes, insurance and utilities
§ 11:75 — —Deductibility of property taxes
§ 11:76 — —Acceptance of cash to pay expenses
§ 11:77 Sale of a residence held by a QPRT
§ 11:78 Sale of residence to grantor now prohibited

§ 11:79 Sale to grantor now prohibited—No capital gain if grantor trust as to principal
§ 11:80 — —Criteria for grantor trust as to principal
§ 11:81 — —Reversion interest
§ 11:82 Retention of qualified proceeds
§ 11:83 Payment of income and principal
§ 11:84 Conversion of QPRT to qualified annuity interest
§ 11:85 —Computation of payout percentage
§ 11:86 —Calculating the gift tax value

D. GIFT TRUSTS

§ 11:87 Trusts funded by gifts that qualify for the annual exclusion
§ 11:88 Trusts for the benefit of minors
§ 11:89 Trusts with annual withdrawal rights
§ 11:90 Trusts that pay all of the income to the trust beneficiary

E. FUNDING IRREVOCABLE TRUSTS

§ 11:91 Considerations generally applicable to irrevocable trusts
§ 11:92 —Capital gains tax
§ 11:93 Irrevocable gift trusts
§ 11:94 Charitable remainder trusts
§ 11:95 Charitable lead trusts
§ 11:96 QPRTs
§ 11:97 Insurance trust

F. INCOME TAXATION OF TRUSTS

§ 11:98 Income taxation of trusts—Overview
§ 11:99 —Overview of taxation of non-grantor trusts
§ 11:100 —Non-grantor trusts—Distributable net income
§ 11:101 — —Definition of income
§ 11:102 — —Tax year of trust
§ 11:103 — —Taxation of capital gains
§ 11:104 —Overview of taxation of grantor trusts
§ 11:105 —Overview of taxation of grantor trusts—Attribution of trustee's powers to grantor
§ 11:106 — —Attribution of spouse's powers to grantor
§ 11:107 — —Grantor trust treatment as to less than all of a trust
§ 11:108 — —Interests or controls that trigger grantor trust status
§ 11:109 — —Reversionary interests
§ 11:110 — —Discretion over income or principal—Basic rule
§ 11:111 — — —Exceptions to basic rule
§ 11:112 — —Certain administrative powers or actions
§ 11:113 — —Rights of revocation
§ 11:114 — —Use of income for certain purposes
§ 11:115 — —Non-grantor treated as grantor
§ 11:116 Planning considerations with grantor trust status
§ 11:117 —Possible changes and regulatory guidance

G. REFORMATION AND AMENDMENT OF IRREVOCABLE TRUSTS

§ 11:118 Irrevocability
§ 11:119 Flexible dispositive terms
§ 11:120 Amendment by a third party under terms of the trust
§ 11:121 Amendment under EPTL § 7-1.9
§ 11:122 —Identifying beneficially interested persons
§ 11:123 Decanting under EPTL § 10-6.6—Overview
§ 11:124 —Overview—Need for power of invasion
§ 11:125 — —Definitions
§ 11:126 — — —Notion of unlimited discretion
§ 11:127 —Provisions common to the two kinds of decanting authority—Standard of care
§ 11:128 — —Mechanics
§ 11:129 — —Limitations on authority
§ 11:130 —Decanting authority where there is unlimited discretion to invade
§ 11:131 —Decanting authority where there is limited discretion to invade
§ 11:132 —Some considerations
§ 11:133 Reformation
§ 11:134 Severance of trusts
§ 11:135 Termination of uneconomic trusts

H. FORMS

§ 11:136 One life insurance trust
§ 11:137 Explanation of provisions of name insurance trust
§ 11:138 Survivorship insurance trust
§ 11:139 Qualified Personal Residence Trust
§ 11:140 Gift trust for grandchild
§ 11:141 Amendment and revocation of irrevocable trust under EPTL § 7-1.9

Table of Laws and Rules

Table of Cases

Index