### LIST OF CHAPTERS

### **VOLUME 1**

Chapter 1	ESTATE PLANNING Laurie A. Hunter, Esq.
Chapter 2	ETHICAL ISSUES IN ESTATE PLANNING James R. Walker, Esq.
Chapter 3	POWERS OF ATTORNEY Thomas A. Rodriguez, Esq.
Chapter 4	ENGAGEMENT LETTERS Constance Tromble Eyster, Esq.
Chapter 5	HIPAA ISSUES IN ESTATE PLANNING Michael A. Kirtland, J.D., LL.M., CELA Catherine Anne Seal, J.D., LL.M., CELA
Chapter 6	ADVANCE DIRECTIVES  Michael A. Kirtland, J.D., LL.M., CELA
Chapter 7	PRINCIPLES OF WILLS David K. Johns, Esq.
Chapter 8	NONPROBATE TRANSFERS  Josie M. Faix, Esq.
Chapter 9	JOINT TENANCY Carl G. Stevens, Esq.
Chapter 10	UNMARRIED COUPLES Elizabeth A. Bryant, Esq. Erica L. Johnson, Esq.
Chapter 11	ELDER LAW CONSIDERATIONS FOR ESTATE PLANNING Kerri L. Klein, Esq.
Chapter 12	TESTAMENTARY TRUSTS  David A. Turner, Esq.

(11/16) TOC-1

INTER VIVOS TRUSTS Walter M. Kelly II, Esq.

Chapter 13

#### **Chapter 14 REVOCABLE TRUSTS**

James W. Buchanan III, Esq. Susan Fox, J.D., M.A. Daniel A. Rich, Esq.

**Chapter 15 JOINT REVOCABLE TRUSTS** 

Carl G. Stevens, Esq. Bette Heller, Esq.

**Chapter 16** IRREVOCABLE TRUSTS

Edward D. Brown, Esq. Eric R. Kaplan, Esq.

**Chapter 17** IRREVOCABLE LIFE INSURANCE TRUSTS

Bruce A. Fowler, Esq.

Chapter 18 RESERVED

**Chapter 19 LIFE INSURANCE AND ANNUITIES** 

Maggie Mitchell, J.D., CLU, ChFC, AEP

Chapter 20 INTER VIVOS GIFTS

Mark D. Masters, Esq.

**Chapter 21 PERSONAL PROPERTY** 

Mark J. Sather, Esq.

**Chapter 22 REAL PROPERTY** 

R. Sterling Ambler, Esq. (1931-2004)

Matthew L. Trinidad, Esq.

**Chapter 23 POWERS OF APPOINTMENT** 

Jessica L. Broderick, Esq.

#### **VOLUME 2**

**Chapter 24 FIDUCIARIES** 

Paul M. Smith, Esq.

**Chapter 25 ADMINISTRATIVE POWERS** 

Bryan C. Benbow, Esq.

Chapter 26 DRAFTING AND INTERPRETATION OF DISCRETIONARY

**DISTRIBUTION STANDARDS** 

Carol Warnick, Esq.

Kelly Dickson Cooper, Esq. Rebecca Klock Schroer, Esq.

TOC-2 (11/16)

### Chapter 27 RESERVED Chapter 28 **CONTRACTS TO WILL** David M. Swank, Esq. Chapter 29 **COMMUNITY PROPERTY** Shelly D. Merritt, J.D., CPA Chapter 30 **MARITAL AGREEMENTS** Barbara Tocker Ross, Esq. MARITAL DISSOLUTION AND ESTATE PLANNING Chapter 31 Diane E. Wozniak, Esq. Chapter 32 **EMPLOYEE BENEFITS** Renée W. O'Rourke, Esq. Chapter 33 **ASSET PROTECTION** David H. Brantz, Esq. Carl G. Stevens, Esq. Chapter 34 FARM AND RANCH ESTATE PLANNING Donald H. Kelley, Esq. SPECIAL USE VALUATION Chapter 35 James F. Ingraham, Esq. **MULTI-JURISDICTIONAL MATTERS** Chapter 36 Stephen M. Brainerd, Esq. Chapter 37 **CHARITABLE DISPOSITIONS** Michelle M. Rose-Hughes, Esq. Chapter 38 SPLIT-INTEREST CHARITABLE TRUSTS Michelle M. Rose-Hughes, Esq. Chapter 39 ALLOCATION OF ESTATE AND GENERATION-SKIPPING TRANSFER TAXES

(11/16) TOC-3

Nancy R. Crow, Esq.

Robert Wiegand II, Esq. Kimberly J. Raemdonck, Esq.

ESTATE TAX MARITAL DEDUCTION

Chapter 40

#### Chapter 41 GENERATION-SKIPPING TRANSFER TAX STRATEGIES AND

TECHNIQUES

Tyler C. Murray, Esq. Michelle McCarthy, Esq.

#### **Chapter 42 SPECIAL VALUATION RULES**

Michael R. Stiff, Esq. Taylor P. Bechel, Esq.

#### Chapter 43 ADVANCED ESTATE PLANNING TECHNIQUES

Clara Brown Shaffer, Esq.

#### Chapter 44 ESTATE, GIFT, AND INCOME TAXATION OF NONRESIDENT/

NONCITIZEN ALIEN INDIVIDUALS

Randolph M. Karsh, Esq. Steven R. Ogle, Esq.

#### **Chapter 45 GRANTOR RETAINED ANNUITY TRUSTS**

Laura S. Hundley, Esq.

#### **Chapter 46 PROTECTED PERSONS**

Magistrate (Retired) Sandra Franklin M. Carl Glatstein, Esq.

#### Chapter 47 BASICS OF OIL AND GAS

C. Elaine Carleton, Esq. Lauren W. Matthews, Esq.

#### **Chapter 48 WILL CONTESTS**

Herbert E. Tucker, Esq.

#### Chapter 49 CONTESTS AND DISPUTES IN ESTATE AND TRUST PROCEEDINGS

Kelly Dickson Cooper, Esq.

#### Chapter 50 INTENT AND REFORMATION: WILL FORM THWART SUBSTANCE?

Spencer J. Crona, Esq.

#### **Chapter 51 EQUITABLE REMEDIES**

David W. Kirch, Esq.

Laurence I. Gendelman, Esq.

Sierra R. Ward, Esq.

#### **SUBJECT INDEX**

TOC-4 (11/16)

### **TABLE OF CONTENTS**

### **VOLUME 1**

Chapter 1	ESTATE PLANNING		
	§ 1.1	INTRODUCTION	
	§ 1.2	THE CLIENT	
	§ 1.3	INITIAL MEETING/CHOOSING THE PLAN	
		§ 1.3.1—"Simple" Wills § 1.3.2—Wills With Contingent Trusts § 1.3.3—Disclaimer Wills § 1.3.4—Marital Deduction Wills § 1.3.5—Revocable Trusts § 1.3.6—Further Tax Planning § 1.3.7—Farm And Ranch Issues § 1.3.8—Foreign Spouse § 1.3.9—Community Property	
	§ 1.4	PLANNING FOR INCAPACITY	
	§ 1.5	USE OF FORMS	
	§ 1.6	FOLLOW-UP AFTER THE DOCUMENTS ARE SIGNED	
	§ 1.7	CONTINUING REPRESENTATION	
	§ 1.8	DIGITAL ASSETS	
Chapter 2	ETHIC	AL ISSUES IN ESTATE PLANNING	
	§ 2.1	GENERAL	
		§ 2.1.1—The Colorado Rules Of Professional Conduct § 2.1.2—Application To Estate Planning Practice	
	§ 2.2	SELECTED RULES	
		§ 2.2.1—Competence — Rule 1.1 § 2.2.2—Scope — Rule 1.2 § 2.2.3—Diligence — Rule 1.3	

- § 2.2.4—Communication Rule 1.4
- § 2.2.5—Fees Rule 1.5
- § 2.2.6—Confidentiality Of Information Rule 1.6
- § 2.2.7—Conflict Of Interest: General Rule Rule 1.7
- § 2.2.8—Conflict Of Interest: Business Transactions With Clients Rule 1.8(a)
- § 2.2.9—Conflict Of Interest: Client Gifts To The Lawyer Rule 1.8(c)
- § 2.2.10—Conflict Of Interest: Payment Of Fees By Non-Client Rule 1.8(f)
- § 2.2.11—Conflict Of Interest: Former Client Rule 1.9
- § 2.2.12—Organization As Client Rule 1.13
- § 2.2.13—Client With Diminished Capacity Rule 1.14
- § 2.2.14—Safekeeping Property
- § 2.2.15—Advisor Rule 2.1
- § 2.2.16—Truthfulness In Statements To Others Rule 4.1
- § 2.2.17—Dealing With Unrepresented Person Rule 4.3

#### § 2.3 COMMON PRACTICE SITUATIONS

- § 2.3.1—Representing A Married Couple
- § 2.3.2—Family Member (Or Third Party) Pressures And Undue Influence
- § 2.3.3—Complex Estates And The Client Request For A "Simple Will"
- § 2.3.4—Relations With Referral Sources
- § 2.3.5—Fees Paid By One Other Than The Client
- § 2.3.6—Representing Business Entities And Owners
- § 2.3.7—Payment Of Fee With Property
- § 2.3.8—Lawyer Serving As Fiduciary For Client
- § 2.3.9—Marital Agreements And Conflicts Inherent In Prenuptial Agreements
- § 2.3.10—Client Divorce And File Separation

#### **Chapter 3 POWERS OF ATTORNEY**

#### § 3.1 FINANCIAL POWERS OF ATTORNEY

- § 3.1.1—Basic Definition Of A Financial Power Of Attorney
- § 3.1.2—The Difference Between A Medical And A Financial Power Of Attorney
- § 3.1.3—Limited Powers Of Attorney
- § 3.1.4—Durable Powers Of Attorney
- § 3.1.5—Benefit Of A Durable Power Of Attorney
- § 3.1.6—Creation Of A Power Of Attorney
- § 3.1.7—Effective Date For Powers Of Attorney
- § 3.1.8—Impact Of A Power Of Attorney On A Principal's Rights
- § 3.1.9—Revocation Of A Power Of Attorney

TOC-6 (11/16)

#### Table of Contents

	ξ	₹ 3.	1.10 -	-Selection	Of Agent	Under	Power	Of Attorne	y
--	---	------	--------	------------	----------	-------	-------	------------	---

- § 3.1.11—Successor Agents
- § 3.1.12—Co-Agents
- § 3.1.13—The Agent's Duties And Responsibilities To The Principal
- § 3.1.14—The Agent's Compensation And Reimbursement
- § 3.1.15—Authority Of Agent
- § 3.1.16—Liability Of The Agent To The Principal
- § 3.1.17—Agent's Misuse Of A Power Of Attorney
- § 3.1.18—Resignation By The Agent
- § 3.1.19—Expiration Or Termination Of A Power Of Attorney
- § 3.1.20—Interstate Effect Of Powers Of Attorney
- § 3.1.21—Acceptance And Reliance On Acknowledged Powers Of Attorney, And Liability For Refusal To Accept

#### § 3.2 MEDICAL POWERS OF ATTORNEY

- § 3.2.1—Introduction
- § 3.2.2—Agent's Authority
- § 3.2.3—Appointment Of Medical Agent
- § 3.2.4—Agent's Access To Medical Records
- § 3.2.5—Dissemination Of Medical Powers Of Attorney
- § 3.2.6—Interstate Effect
- § 3.2.7—Advance Directives And Living Wills
- § 3.2.8—Termination Of Medical Power Of Attorney

#### **EXHIBITS**

- Exhibit 3A—C.R.S. § 15-14-741: Statutory Form Power Of Attorney
- Exhibit 3B—Prefatory Power Of Attorney Warning Notice
- Exhibit 3C—Acknowledgment Form For Agent Under Power Of Attorney

#### **Chapter 4 ENGAGEMENT LETTERS**

#### § 4.1 INTRODUCTION

#### § 4.2 IDENTITY OF THE CLIENT

#### § 4.3 FEES AND COSTS

- § 4.3.1—Regular Representation
- § 4.3.2—Reasonable Fees
- § 4.3.3—Change In Basis Or Rate Of Fee
- § 4.3.4—Other Charges
- § 4.3.5—Flat Fees
- § 4.3.6—Retainers

- § 4.3.7—Fees Paid By Someone Other Than Client
- § 4.3.8—Collection Of Fees

#### § 4.4 DISCLOSURE TO THIRD PARTIES

- § 4.4.1—What Is The Attorney-Client Privilege?
- § 4.4.2—Is Attorney-Client Privilege Waived For Discussions With Other Advisors?
- § 4.4.3—Is Attorney-Client Privilege Waived For Discussions With Family Members?
- § 4.4.4—Suggested Language

#### § 4.5 LIMITING THE SCOPE OF ENGAGEMENT

#### § 4.6 REPRESENTING MULTIPLE CLIENTS

- § 4.6.1—Separate Versus Joint Representation
- § 4.6.2—Confidentiality
- § 4.6.3—Conflicts Of Interest
- § 4.6.4—Representing Spouses Or Partners In A Civil Union Jointly
- § 4.6.5—Representing Multiple Family Members
- § 4.6.6—Representing Testator And Beneficiary Of Testator's Estate
- § 4.6.7—Former Clients
- § 4.6.8—Continuing To Represent A Client After Withdrawing From Joint Representation
- § 4.6.9—Representing Clients After Dissolution
- § 4.6.10—Representation Of One Client After The Death Of The Other Joint Client

#### § 4.7 REPRESENTING DISABLED INDIVIDUALS

#### § 4.8 TERMINATION OF REPRESENTATION

#### **Chapter 5 HIPAA ISSUES IN ESTATE PLANNING**

#### § 5.1 HIPAA OVERVIEW

#### § 5.2 THE HIPAA PRIVACY RULE

§ 5.2.1—Authorization For Release

#### § 5.3 PERSONAL REPRESENTATIVE

§ 5.3.1—Designation As A Personal Representative Under Powers Of Attorney

TOC-8 (11/16)

# § 5.4 USE OF MEDICAL INFORMATION IN GUARDIANSHIP OR CONSERVATORSHIP PROCEEDINGS

- § 5.4.1—Obtaining Medical Information Through Power Of Attorney
- § 5.4.2—Court Order
- § 5.4.3—HIPAA Release
- § 5.4.4—HIPAA Release Language Within A Trust Or Similar Document

#### § 5.5 VALID AUTHORIZATION

§ 5.5.1—Core Requirements

#### § 5.6 DISCLOSURE

- § 5.6.1—Direct Disclosure
- § 5.6.2—Authorization
- § 5.6.3—Caregiver Exception
- § 5.6.4—Court Order

#### § 5.7 POST-MORTEM DISCLOSURES

§ 5.7.1—Post-Mortem Representation

#### § 5.8 PRE-NEED PREPARATION OF A HIPAA RELEASE

#### Chapter 6 ADVANCE DIRECTIVES

#### § 6.1 ADVANCE DIRECTIVES IN COLORADO

§ 6.1.1—Types Of Advance Directives

## § 6.2 ADVANCE DIRECTIVE FOR MEDICAL/SURGICAL TREATMENT — LIVING WILL

- § 6.2.1—Incapacity
- § 6.2.2—Terminal Illness And Persistent Vegetative State
- § 6.2.3—Nutrition Or Hydration
- § 6.2.4—Decision Options
- § 6.2.5—Living Will Forms And Additional Options
- § 6.2.6—Prior Existing Living Wills
- § 6.2.7—Challenge To Validity
- § 6.2.8—Revocation
- § 6.2.9—Reliance
- § 6.2.10—Liability For Misuse

#### § 6.3 MEDICAL ORDERS FOR SCOPE OF TREATMENT

- § 6.3.1—Information For The MOST Form
- § 6.3.2—Compliance With MOST
- § 6.3.3—Relationship Of MOST To Other Advance Directives

### § 6.4 DIRECTIVES RELATING TO CARDIOPULMONARY RESUSCITATION

#### § 6.5 PROXY DECISION-MAKING

- § 6.5.1—Selection Of A Proxy Decision-Maker
- § 6.5.2—Selection Of A Surrogate Decision-Maker

#### **Chapter 7 PRINCIPLES OF WILLS**

#### § 7.1 CLASSIFICATION OF WILLS

- § 7.1.1—Written Instrument
- § 7.1.2—Foreign Wills
- § 7.1.3—Special Classes Of Wills

#### § 7.2 TESTAMENTARY CAPACITY

- § 7.2.1—Lawyer's Duty To Establish
- § 7.2.2—Capacity Defined
- § 7.2.3—Other Factors Affecting Validity

#### § 7.3 PUBLISHING CLAUSES

- § 7.3.1—Self-Identification
- § 7.3.2—Residence And Domicile
- § 7.3.3—Prior Instruments

### § 7.4 DECLARATIONS AND DESCRIPTIONS OF PERSONS AND PROPERTY

- § 7.4.1—Family Status
- § 7.4.2—Devisees
- § 7.4.3—Powers Of Appointment
- § 7.4.4—Real Property
- § 7.4.5—Tangible Personal Property
- § 7.4.6—Specific Devises
- § 7.4.7—Residue

TOC-10 (11/16)

#### § 7.5 CLASSES OF DEVISES

- § 7.5.1—Specific Devise
- § 7.5.2—General Devise
- § 7.5.3—Demonstrative Devise
- § 7.5.4—Residuary Devise

#### § 7.6 RIGHTS TO INCOME AND INTEREST

- § 7.6.1—Income Rights
- § 7.6.2—Testator's Control

#### § 7.7 CODICILS

- § 7.7.1—Advantages And Disadvantages
- § 7.7.2—Integration With Earlier Instruments
- § 7.7.3—Alternatives To Codicils

#### § 7.8 REVOCATION AND RELATED MATTERS

- § 7.8.1—Statutory Methods Of Revocation
- § 7.8.2—Revocation Of The Subsequent Instrument Purporting To Revoke Earlier Instruments Doctrine Of Revival
- § 7.8.3—Dependent Relative Revocation
- § 7.8.4—Republication
- § 7.8.5—Capacity And Intent To Revoke

#### § 7.9 SUBSTANTIVE WILL CLAUSES

- § 7.9.1—Payment Of Charges Against The Estate
- § 7.9.2—Personal Matters
- § 7.9.3—Particular Devises
- § 7.9.4—Residuary Devises

#### § 7.10 DEFINITIONAL MATTERS

- § 7.10.1—Accuracy And Completeness Of Description
- § 7.10.2—Class Gifts

#### § 7.11 DOCTRINES AFFECTING DISTRIBUTION

- § 7.11.1—Ademption
- § 7.11.2—Advancements
- § 7.11.3—Abatement
- § 7.11.4—Contribution

- § 7.11.5—Exoneration
- § 7.11.6—Lapse And Antilapse
- § 7.11.7—Gift By Implication

#### § 7.12 DISCLAIMER

#### § 7.13 PROVISIONS RELATING TO TRUSTEES

- § 7.13.1—Power To Terminate Trust
- § 7.13.2—Power To Resign As Trustee
- § 7.13.3—Power To Remove And Appoint Trustees
- § 7.13.4—Power To Change Trust Situs
- § 7.13.5—Release Of Powers

#### § 7.14 SURVIVORSHIP CLAUSES

- § 7.14.1—Nature Of Problem
- § 7.14.2—Absence Of Provision In Will
- § 7.14.3—Express Provisions In Will

#### § 7.15 APPOINTMENT OF FIDUCIARIES

- § 7.15.1—Personal Representatives
- § 7.15.2—Testamentary Trustees
- § 7.15.3—Guardians

#### § 7.16 REFERENCES TO MATTERS OUTSIDE THE WILL

- § 7.16.1—Incorporation By Reference
- § 7.16.2—Facts Of Independent Significance
- § 7.16.3—Testamentary Additions To Trusts
- § 7.16.4—Contracts Relating To Wills

#### § 7.17 MISCELLANEOUS WILL CLAUSES

- § 7.17.1—Disinheritance, Omitted Spouses, And Pretermitted Heirs
- § 7.17.2—In Terrorem Clauses
- § 7.17.3—Choice Of Applicable Law
- § 7.17.4—Invalidity And Severability
- § 7.17.5—Relation To Wills Of Others

#### § 7.18 TECHNICAL RULES

- § 7.18.1—Rule In Shelley's Case
- § 7.18.2—Doctrine Of Worthier Title
- § 7.18.3—Rule In Wild's Case

TOC-12 (11/16)

#### Table of Contents

- § 7.18.4—Destructibility Of Interests
- § 7.18.5—Rule Against Perpetuities
- § 7.18.6—Restrictions On Accumulations
- § 7.18.7—Doctrine Of Acceleration

#### § 7.19 EXECUTION AND SAFEKEEPING

- § 7.19.1—Execution
- § 7.19.2—Signature Of Testator And Witnesses
- § 7.19.3—Self-Proving Clause
- § 7.19.4—Witness
- § 7.19.5—Safekeeping Of Executed Will

#### **Chapter 8 NONPROBATE TRANSFERS**

#### § 8.1 INTRODUCTION

#### § 8.2 NONPROBATE TRANSFERS IN GENERAL

#### § 8.3 PLANNING WITH PROBATE AND NONPROBATE TRANSFERS

- § 8.3.1—Advantages Of Probate Transfers
- § 8.3.2—Advantages Of Nonprobate Transfers
- § 8.3.3—Rules Of Construction

#### § 8.4 SPECIFIC NONPROBATE TRANSFERS

- § 8.4.1—Gifts Causa Mortis
- § 8.4.2—Unrecorded Deeds
- § 8.4.3—Beneficiary Deeds
- § 8.4.4—Vehicle Beneficiary Designation Form
- § 8.4.5—U.S. Savings Bonds
- § 8.4.6—Collection Of Personal Property By Affidavit
- § 8.4.7—Nonprobate Transfers On Death (Article 15, CPC)

#### Chapter 9 JOINT TENANCY

#### § 9.1 CREATION OF JOINT TENANCY

- § 9.1.1—Definition
- § 9.1.2—Subject Matter
- § 9.1.3—Creation Of Joint Tenancy
- § 9.1.4—Gift Tax Consequences Of Creation

#### § 9.2 TERMINATION OF JOINT TENANCY

- § 9.2.1—In General
- § 9.2.2—Case Law Regarding Termination
- § 9.2.3—Termination By Unilateral Or Self-Conveyance
- § 9.2.4—Gift Tax Consequences Of Termination
- § 9.2.5—Federal Estate Tax
- § 9.2.6—Income Tax Implications
- § 9.2.7—Simultaneous Death

#### § 9.3 ADVANTAGES OF JOINT TENANCY

- § 9.3.1—Non-Tax Advantages
- § 9.3.2—Income Tax Advantage

#### § 9.4 DISADVANTAGES OF JOINT TENANCY

- § 9.4.1—Non-Tax Disadvantages
- § 9.4.2—Tax Disadvantages

#### § 9.5 ESTATE PLANNING

- § 9.5.1—When To Use Joint Tenancy
- § 9.5.2—When Not To Use Joint Tenancy
- § 9.5.3—Severance
- § 9.5.4—Disclaimer
- § 9.5.5—Conclusion

#### **Chapter 10 UNMARRIED COUPLES**

#### § 10.1 INTRODUCTION AND PRACTICAL CONSIDERATIONS

- § 10.1.1—Marriage
- § 10.1.2—Civil Union
- § 10.1.3—Registered Committed Partners (Domestic Partners)
- § 10.1.4—Estate Planning Questionnaire
- § 10.1.5—Conflict Of Interest
- § 10.1.6—No Marital Or Civil Union Privilege
- § 10.1.7—Termination Of Relationship And Need To Revise Documents
- § 10.1.8—Self-Prepared Documents

TOC-14 (11/16)

#### § 10.2 CONTRACTS AND AGREEMENTS

- § 10.2.1—Living Together/Marital Or Civil Union Agreement
- § 10.2.2—Real Property Agreement
- § 10.2.3—Contract To Make A Will

#### § 10.3 OWNERSHIP OF ASSETS

- § 10.3.1—Co-Ownership In General
- § 10.3.2—Tax Issues
- § 10.3.3—Acceleration Of Mortgage On Transfer
- § 10.3.4—Dissolution Of Relationship
- § 10.3.5—Beneficiary Deeds

#### § 10.4 ISSUES DEALING WITH CHILDREN

- § 10.4.1—Medical Power Of Attorney For Unborn Child
- § 10.4.2—Delegation Of Parental Powers
- § 10.4.3—Nomination Of Guardian
- § 10.4.4—Second Parent Adoption
- § 10.4.5—Stepparent Adoption

#### § 10.5 ESTATE PLANNING

- § 10.5.1—Terminology And Drafting
- § 10.5.2—Advance Directives And Collateral Documents

#### § 10.6 DESIGNATED BENEFICIARY AGREEMENTS

- § 10.6.1—History
- § 10.6.2—Requirements To Make A Valid And Enforceable DBA
- § 10.6.3—Rights Conveyed
- § 10.6.4—Revocation Or Termination
- § 10.6.5—Probate Considerations
- § 10.6.6—Additional Considerations

#### § 10.7 CONCLUSION

#### **EXHIBITS**

Exhibit 10A—Designated Beneficiary Agreement

Exhibit 10B—Revocation Of Designated Beneficiary Agreement

### Chapter 11 ELDER LAW CONSIDERATIONS FOR ESTATE PLANNING **IDENTIFICATION OF ISSUES** § 11.1 § 11.2 **SPECIAL NEEDS TRUSTS** § 11.2.1—"May" Versus "Shall" Language § 11.2.2—Health, Education, Maintenance, And Support Language § 11.2.3—Ability To Pursue Public Benefits § 11.2.4—Ability To Distribute Even If Such Distribution May Negatively **Impact Benefits** § 11.2.5—Termination Provisions § 11.2.6—Testamentary Versus *Inter Vivos* § 11.3 LIMITATION ON TANGIBLE PERSONAL PROPERTY **DISTRIBUTIONS** TRUSTEE PROVISIONS § 11.4 § 11.4.1—Beneficiary Should Not Serve As A Trustee § 11.4.2—No Allowance For Beneficiaries To Appoint Or Remove § 11.5 NOMINATION OF GUARDIAN FOR SPOUSE, PARTNER IN A CIVIL UNION, OR ADULT CHILD § 11.6 NOMINATION OF CONSERVATOR FOR SPOUSE, PARTNER IN A **CIVIL UNION, PARENT, OR CHILD** AUGMENTED ESTATE TRUST FOR SPOUSE § 11.7 § 11.8 GENERAL DURABLE POWERS OF ATTORNEY § 11.9 GIFTING AND ASSET TRANSFERS — BE AWARE OF PENALTIES § 11.10 **BENEFICIARY DESIGNATIONS** § 11.11 CAPACITY CONCERNS § 11.11.1—Doctor's Letter § 11.11.2—Involvement Of Family Members § 11.12 CONCLUSION

TOC-16 (11/16)

#### **Chapter 12 TESTAMENTARY TRUSTS**

#### § 12.1 GENERAL REQUIREMENTS

- § 12.1.1—Intent To Create
- § 12.1.2—Corpus
- § 12.1.3—Beneficiaries
- § 12.1.4—Trustees

#### § 12.2 PURPOSES

- § 12.2.1—Administrative Considerations
- § 12.2.2—Practical Considerations
- § 12.2.3—Tax Considerations

#### § 12.3 PROVISIONS OF TESTAMENTARY TRUSTS

- § 12.3.1—Distribution Provisions
- § 12.3.2—Vesting And Termination Provisions
- § 12.3.3—Investment Provisions
- § 12.3.4—Special Provisions

#### § 12.4 SECRET TRUSTS

- § 12.4.1—Impossible By Express Testamentary Trust
- § 12.4.2—Devise Coupled With Secret Trust

#### § 12.5 JURISDICTION

- § 12.5.1—Colorado Statutes
- § 12.5.2—Trust Proceedings Venue
- § 12.5.3—Provision For Change Of Situs

#### § 12.6 TAXATION

- § 12.6.1—Income Taxes
- § 12.6.2—Estate Taxes

#### Chapter 13 INTER VIVOS TRUSTS

#### § 13.1 INTRODUCTION

#### § 13.2 GENERAL PROBLEMS

- § 13.2.1—Statute Of Frauds
- § 13.2.2—Statute Of Wills

#### § 13.3 DRAFTING TRUST AGREEMENTS

- § 13.3.1—Identity Of Settlor And Trustee
- § 13.3.2—Purpose Of Trust
- § 13.3.3—Initial Corpus
- § 13.3.4—Beneficiaries
- § 13.3.5—Enjoyment And Vesting Of Interests
- § 13.3.6—Administrative Powers
- § 13.3.7—Revocable Or Irrevocable
- § 13.3.8—Settlor's Retained Powers
- § 13.3.9—Designation Of Trust Situs

#### § 13.4 JURISDICTION OF COURTS

- § 13.4.1—Jurisdiction And Venue
- § 13.4.2—Trust Registration

#### § 13.5 REVOCABLE INTER VIVOS TRUST

- § 13.5.1—Advantages
- § 13.5.2—Disadvantages
- § 13.5.3—Tax Implications
- § 13.5.4—Rights Of Spouses And Creditors

#### § 13.6 IRREVOCABLE INTER VIVOS TRUST

- § 13.6.1—Advantages
- § 13.6.2—Disadvantages
- § 13.6.3—Tax Implications
- § 13.6.4—Rights Of Spouses And Creditors

#### § 13.7 SHORT-TERM REVERSIONARY TRUST

TOC-18 (11/16)

#### § 13.8 TRUST FOR SUPPORT OF PERSONS OTHER THAN SETTLOR

- § 13.8.1—I.R.C. § 2503(c) Trust For Minors
- § 13.8.2—Colorado Uniform Transfers To Minors Act
- § 13.8.3—Other Support Trusts

#### § 13.9 INDEPENDENT TRUSTEE FOR DISCRETIONARY TRUST

#### § 13.10 COLORADO STATUTE

#### § 13.11 DISCRETIONARY POWERS OF TRUSTEE

- § 13.11.1—Desirability Of Discretion
- § 13.11.2—Federal Tax Implications
- § 13.11.3—Colorado Tax Implications

#### § 13.12 RULE AGAINST PERPETUITIES

- § 13.12.1—Statutory Reform
- § 13.12.2—Historical Discussion Of Common Law Rule For Pre-May 31, 1991 Trusts
- § 13.12.3—Powers Of Appointment (Pre-May 31, 1991)
- § 13.12.4—Class Gifts (Pre-May 31, 1991)

#### § 13.13 RULE AGAINST ACCUMULATIONS

# § 13.14 SELECTED *COLORADO LAWYER* ARTICLES PERTAINING TO TRUSTS

#### **Chapter 14 REVOCABLE TRUSTS**

#### § 14.1 **DEFINITIONS**

- § 14.1.1—The Revocable *Inter Vivos* Trust
- § 14.1.2—The Settlor
- § 14.1.3—The Trustee
- § 14.1.4—Trust Advisors
- § 14.1.5—Execution Formalities

#### § 14.2 REVOCATION AND AMENDMENT

- § 14.2.1—By Settlor
- § 14.2.2—By Agent Or Conservator
- § 14.2.3—Decanting Applied To Revocable Trusts

#### § 14.3 TAX IMPLICATIONS

- § 14.3.1—In General
- § 14.3.2—Federal Income Tax
- § 14.3.3—Colorado Income Tax
- § 14.3.4—Federal Gift Tax
- § 14.3.5—Colorado Gift Tax
- § 14.3.6—Federal Estate Tax
- § 14.3.7—Colorado Inheritance/Estate Tax
- § 14.3.8—Tax Savings Characteristics

# § 14.4 ADVANTAGES OF FUNDABLE, BUT NOT NECESSARILY FUNDED, REVOCABLE TRUSTS (THAT ARE NOT SHARED BY TESTAMENTARY TRUSTS)

- § 14.4.1—Lifetime Benefits To Settlor
- § 14.4.2—Asset Management
- § 14.4.3—Revocable Trusts Compared With Durable Powers Of Attorney
- § 14.4.4—Appointment And Observation Of Trustee
- § 14.4.5—Continuity Of Management
- § 14.4.6—Avoidance Of Domiciliary Probate
- § 14.4.7—Avoidance Of Ancillary Probate
- § 14.4.8—Privacy
- § 14.4.9—Resistance To Hazards Incident To Wills
- § 14.4.10—Summary

#### § 14.5 DISADVANTAGES OF (FUNDED) REVOCABLE TRUSTS

- § 14.5.1—Expense To Establish
- § 14.5.2—Creditors' Claims And Post-Mortem Estate Planning
- § 14.5.3—Formalities Of Operation
- § 14.5.4—Disinheritance Of Surviving Spouse
- § 14.5.5—Loss Of Eligibility For Public Benefits
- § 14.5.6—Summary

#### § 14.6 CREATING AND FUNDING REVOCABLE TRUSTS

- § 14.6.1—Consider The Mental Capacity Of The Settlor
- § 14.6.2—Creating A Revocable Trust For An Incapacitated Person
- § 14.6.3—Consider The Age And Health Of The Settlor
- § 14.6.4—Is Current Funding Appropriate?
- § 14.6.5—Funding Techniques
- § 14.6.6—Summary

TOC-20 (11/16)

#### § 14.7 SELECTION AND REMOVAL OF TRUSTEES

- § 14.7.1—Importance Of Experience
- § 14.7.2—Individual Trustees
- § 14.7.3—Professional Trustees
- § 14.7.4—HIPAA Concerns Relating To Incapacity Of Trustee Or Beneficiary
- § 14.7.5—Removal Of Trustee

#### § 14.8 SPECIALIZED ISSUES

- § 14.8.1—Rights Of Creditors With Respect To Revocable Trusts
- § 14.8.2—Revocable Trusts As Retirement Plan Beneficiaries
- § 14.8.3—Gifts From Revocable Trusts
- § 14.8.4—Joint Revocable Trusts

#### § 14.9 VALIDITY

#### **Chapter 15 JOINT REVOCABLE TRUSTS**

#### § 15.1 INTRODUCTION

#### § 15.2 PROS AND CONS OF A JOINT TRUST

- § 15.2.1—Why Use A Joint Revocable Trust?
- § 15.2.2—Criticism Of Joint Trusts

# § 15.3 INCOME TAX REPORTING AND MANAGEMENT DURING BOTH SETTLORS' LIVES

- § 15.3.1—Income Tax Issues
- § 15.3.2—Management

#### § 15.4 PRESERVATION OF COMMUNITY PROPERTY

#### § 15.5 ESTATE AND GIFT TAX DESIGN CONSIDERATIONS

- § 15.5.1—Gift Tax Issues
- § 15.5.2—Estate Tax Planning With Joint Trusts
- § 15.5.3—The Joint Trust Separate Share Tax Plan
- § 15.5.4—The Spousal Power Of Appointment Trust And PLRs 200101021 And 200210051

#### § 15.6 ADDITIONAL DESIGN CONSIDERATIONS

- § 15.6.1—Trust Property Ownership
- § 15.6.2—Commingling, Scheduling, And Tracing

- § 15.6.3—Joint Trusts And Marital Agreements
- § 15.6.4—Joint Trusts As A Contract To Will
- § 15.6.5—When To Use Separate Trusts Or Schedules
- § 15.6.6—Trust Property Distributions During The Lives Of Settlors

#### § 15.7 CREDITOR ISSUES

- § 15.7.1—Separate Property Or Joint Property
- § 15.7.2—Community Property

#### § 15.8 S CORPORATION STOCK

- § 15.9 LIFE INSURANCE
- § 15.10 FORMS
- § 15.11 CONCLUSION

#### **EXHIBIT**

Exhibit 15A—Diagrams Of Separate Share Joint Trust

#### **Chapter 16** IRREVOCABLE TRUSTS

#### § 16.1 INTRODUCTION

#### § 16.2 GENERAL OVERVIEW

- § 16.2.1—Removing Assets From The Taxable Estate
- § 16.2.2—Intentionally Defective
- § 16.2.3—Gift Tax
- § 16.2.4—Lapsing Crummey Powers
- § 16.2.5—Dynasty Provisions
- § 16.2.6—Spendthrift Provisions

#### § 16.3 CHARITABLE TRUSTS

- § 16.3.1—The Annuity Trust Versus The Unitrust
- § 16.3.2—Features Of The Charitable Remainder Trust
- § 16.3.3—The Charitable Lead Trust

#### § 16.4 INTENTIONALLY DEFECTIVE IRREVOCABLE TRUSTS (IDITs)

- § 16.4.1—IDITs In General
- § 16.4.2—Income Taxation Of A Grantor Trust

TOC-22 (11/16)

#### *Table of Contents*

- § 16.4.3—How An IDIT Reduces The Taxable Estate
- § 16.4.4—Potential Gift Tax Consequences Of Paying The Trust's Tax
- § 16.4.5—Common Methods To Create An Intentionally Defective Grantor Trust
- § 16.4.6—Ability To Toggle Grantor Trust Tax Classification

#### § 16.5 BENEFICIARY CONTROLLED TRUSTS (BCTs)

- § 16.5.1—Overview
- § 16.5.2—Characteristics Of A Typical BCT
- § 16.5.3—Special Powers Of Appointment

#### § 16.6 SPENDTHRIFT TRUSTS

- § 16.6.1—Introduction
- § 16.6.2—Federal Bankruptcy Code With Respect To Spendthrift Trusts
- § 16.6.3—Modern Trend Of Spendthrift Trusts
- § 16.6.4—Colorado Spendthrift Trust Case Law
- § 16.6.5—Discretionary Trusts

#### § 16.7 SELF-SETTLED SPENDTHRIFT TRUSTS

- § 16.7.1—Introduction
- § 16.7.2—Self-Settled Spendthrift Trusts In Colorado
- § 16.7.3—Planning Possibilities In Colorado Using *Restatement (Second) Of Trusts*

#### § 16.8 ASSET PROTECTION TRUSTS

- § 16.8.1—Introduction
- § 16.8.2—The Typical Integrated Estate Plan
- § 16.8.3—Domestic Asset Protection Legislation
- § 16.8.4—Selected Foreign Asset Protection Legislation
- § 16.8.5—Advantages Of An Irrevocable IEPT
- § 16.8.6—Prior Developments

#### § 16.9 THE AMERICAN TAXPAYER RELIEF ACT OF 2012

- § 16.9.1—Introduction
- § 16.9.2—Portability

## § 16.10 SURFACE TRANSPORTATION AND VETERANS HEALTH CARE CHOICE IMPROVMEMENT ACT OF 2015

#### § 16.11 CONCLUSION

#### **Chapter 17** IRREVOCABLE LIFE INSURANCE TRUSTS

## § 17.1 INTRODUCTION AND OBJECTIVES OF AN IRREVOCABLE LIFE INSURANCE TRUST (ILIT)

- § 17.1.1—Introduction
- § 17.1.2—Objectives Of ILITs

#### § 17.2 TRANSFERS TO THE TRUST AND GIFT TAX ISSUES

- § 17.2.1—Gift Tax Generally
- § 17.2.2—Transfer Of An Existing Policy
- § 17.2.3—Gift Tax Annual Exclusion
- § 17.2.4—The Future Interest Rule
- § 17.2.5—Crummey Powers

#### § 17.3 ESTATE TAX ISSUES

- § 17.3.1—The General Rules Of I.R.C. § 2042
- § 17.3.2—Receivable By Executor I.R.C. § 2042(1)
- § 17.3.3—Incidents Of Ownership I.R.C. § 2042(2)
- § 17.3.4—Fiduciary Powers And Removal Powers As An Incident Of Ownership
- § 17.3.5—Transfer Of Policies To The Trustee And The Three-Year Rule Of I.R.C. § 2035
- § 17.3.6—Intent Facts Overcoming Failure To Assign Policy
- § 17.3.7—Gross Estate Inclusion Of Insurance Proceeds For Unintended Persons
- § 17.3.8—Reciprocal Trust Doctrine
- § 17.3.9—Definition Of Spouse
- § 17.3.10—Definition Of Significant Other
- § 17.3.11—Definition Of Child Or Descendant

#### § 17.4 GENERATION-SKIPPING TRANSFER TAX AND ILITS

- § 17.4.1—Generation-Skipping Transfer Tax Generally
- § 17.4.2—Leveraging
- § 17.4.3—Annual Exclusion

#### § 17.5 INCOME TAX ISSUES — GENERALLY

- § 17.5.1—General Rule Of Income Tax Exclusion
- § 17.5.2—The Transfer For Value Rule
- § 17.5.3—Exceptions To The Transfer For Value Rule
- § 17.5.4—Increase In Cash Value

TOC-24 (11/16)

#### Table of Contents

- § 17.5.5—Dividends Received In A Life Insurance Policy
- § 17.5.6—Amounts Received In Surrender Of A Policy
- § 17.5.7—Single Premium And Modified Endowment Rules
- § 17.5.8—The Grantor Trust Rules And ILITs
- § 17.5.9—Taxpayer Identification Number (TIN)

#### § 17.6 CONCLUSION

#### Chapter 18 RESERVED

#### **Chapter 19 LIFE INSURANCE AND ANNUITIES**

#### § 19.1 LIFE INSURANCE

- § 19.1.1—Overview
- § 19.1.2—Uses Of Life Insurance In Estate Planning
- § 19.1.3—Nature Of Life Insurance
- § 19.1.4—Income And Transfer Tax Benefits Of Life Insurance
- § 19.1.5—Life Insurance And Colorado Law

#### § 19.2 TYPES OF LIFE INSURANCE

- § 19.2.1—Term Insurance
- § 19.2.2—Permanent Insurance
- § 19.2.3—Riders

### § 19.3 EVALUATION OF LIFE INSURANCE PRODUCTS AND LIFE INSURANCE COMPANIES

- § 19.3.1—Overview Due Care
- § 19.3.2—Life Insurance Company Ratings And Financial Strength
- § 19.3.3—Offshore Life Insurance Companies
- § 19.3.4—Appropriate Product And Design
- § 19.3.5—Ongoing Review Of The Company And Product

#### § 19.4 TAXATION OF LIFE INSURANCE

- § 19.4.1—Income Taxation Of Life Insurance
- § 19.4.2—Gift Taxation Of Life Insurance
- § 19.4.3—Estate Taxation Of Life Insurance

#### § 19.5 ANNUITIES

#### § 19.6 TYPES OF ANNUITIES

#### § 19.7 TAXATION OF ANNUITIES

- § 19.7.1—Income Taxation Of Annuities
- § 19.7.2—Gift Taxation Of Annuities
- § 19.7.3—Estate Taxation Of Annuities

#### Chapter 20 INTER VIVOS GIFTS

#### § 20.1 REASONS FOR MAKING GIFTS

- § 20.1.1—Tax Considerations
- § 20.1.2—Other Motives

#### § 20.2 FEDERAL GIFT AND ESTATE TAX IMPLICATIONS

- § 20.2.1—Transfers To Which Gift Tax Is Applicable
- § 20.2.2—Transfers Within Three Years Prior To Death
- § 20.2.3—Unified Credit
- § 20.2.4—Exclusions
- § 20.2.5—Marital Deduction
- § 20.2.6—Gift Splitting
- § 20.2.7—Rates Of Tax
- § 20.2.8—Powers Of Appointment
- § 20.2.9—Joint Tenancies
- § 20.2.10—Gifts To Minors Uniform Transfers To Minors Act
- § 20.2.11—A Comment About Income Taxes

# § 20.3 FEDERAL GIFT TAX IMPLICATIONS — I.R.C. CHAPTER 14 SPECIAL VALUATION RULES

- § 20.3.1—Overview
- § 20.3.2—Transfers Of Interests In Corporations And Partnerships (I.R.C. § 2701)
- § 20.3.3—Transfers Of Interests In Trust (I.R.C. § 2702)
- § 20.3.4—Buy-Sell Agreements (I.R.C. § 2703)
- § 20.3.5—Lapsing Rights And Liquidation Restrictions (I.R.C. § 2704)

#### § 20.4 STATE GIFT TAX IMPLICATIONS

- § 20.4.1—Colorado
- § 20.4.2—Other States

TOC-26 (11/16)

#### § 20.5 INCOME TAX IMPLICATIONS

- § 20.5.1—In General
- § 20.5.2—Grantor Trusts
- § 20.5.3—Short-Term Trusts
- § 20.5.4—Interest-Free Loans, Rent-Free Use Of Property
- § 20.5.5—Gifts To Minors

#### § 20.6 SELECTING GIFT PROPERTY — TAX CONSIDERATIONS

- § 20.6.1—Basis
- § 20.6.2—Anticipated Appreciation
- § 20.6.3—Life Insurance
- § 20.6.4—Wasting Assets
- § 20.6.5—Valuation Problems
- § 20.6.6—Appraisal Requirements
- § 20.6.7—Discounts For Fractional And Minority Interests And Lack Of Marketability
- § 20.6.8—Charitable IRA Gifts

#### § 20.7 NON-TAX CONSIDERATIONS

- § 20.7.1—Gifts To Minors
- § 20.7.2—Loss To Donor
- § 20.7.3—Effect On Donee

#### § 20.8 METHODS OF GIVING

- § 20.8.1—Outright Gifts
- § 20.8.2—Gifts To Minors
- § 20.8.3—Qualified ABLE Accounts
- § 20.8.4—Inter Vivos Trusts
- § 20.8.5—Interest-Free Loans
- § 20.8.6—Loans To Family Members
- § 20.8.7—Private Annuities And Self-Canceling Installment Notes
- § 20.8.8—Family Partnerships
- § 20.8.9—Closely Held Corporations
- § 20.8.10—Planned Charitable Giving
- § 20.8.11—Undivided Interests

#### **Chapter 21 PERSONAL PROPERTY**

#### § 21.1 INTRODUCTION

#### § 21.2 RULES OF CONSTRUCTION AND PRESUMPTIONS

- § 21.2.1—Presumption Against Partial Intestacy
- § 21.2.2—Rule Of Ejusdem Generis
- § 21.2.3—Presumption Of Joint Ownership
- § 21.2.4—General And Specific Language
- § 21.2.5—Time Of Application Of Description
- § 21.2.6—Doctrine Of Personal Usage
- § 21.2.7—Judicial Precedent

#### § 21.3 DESCRIPTIVE DEVISES

- § 21.3.1—Introduction
- § 21.3.2—Personal Property
- § 21.3.3—Personal Effects Or Belongings
- § 21.3.4—Money Or Cash
- § 21.3.5—Corporate Stocks And Securities
- § 21.3.6—Personal Property Described By Location

#### § 21.4 TYPES AND CONSTRUCTION OF DEVISES

- § 21.4.1—General Devise
- § 21.4.2—Specific Devise
- § 21.4.3—Demonstrative Devise
- § 21.4.4—Residuary Devise
- § 21.4.5—Abatement Of Devises
- § 21.4.6—Ademption Of Devises
- § 21.4.7—Exoneration

# § 21.5 DISTRIBUTIONS BY THIRD PERSONS OR A SEPARATE WRITING

- § 21.5.1—Power In A Third Person
- § 21.5.2—Selection By Devisee
- § 21.5.3—Incorporation By Reference
- § 21.5.4—Separate Writing Identifying Tangible Personal Property

#### § 21.6 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT

#### § 21.7 APPORTIONMENT OF ESTATE TAX

TOC-28 (11/16)

#### Chapter 22 REAL PROPERTY

#### § 22.1 GENERAL CONSIDERATIONS

- § 22.1.1—Devolution Of Interest At Death
- § 22.1.2—Nature Of Property
- § 22.1.3—State Of The Title
- § 22.1.4—Legal Description
- § 22.1.5—Real Property In Other States
- § 22.1.6—Real Property In Other Countries

#### § 22.2 PROBATE ASSETS

- § 22.2.1—Specific Devised Real Property
- § 22.2.2—Part Of Residue
- § 22.2.3—Solutions To Establish Title To Real Property Without Administration Or Appointment Of A Personal Representative Under C.R.S. §§ 15-12-901 And -1301, *et seq*.

#### § 22.3 CO-TENANCIES

- § 22.3.1—Joint Tenancy
- § 22.3.2—Tenants In Common
- § 22.3.3—Tenancy By The Entirety

#### § 22.4 FAMILY RESIDENCE

- § 22.4.1—Description In The Will
- § 22.4.2—Expenses During Probate Administration

#### § 22.5 TRUSTS

- § 22.5.1—Successor And Multiple Trustees
- § 22.5.2—Titling Real Property In A Trust
- § 22.5.3—Title Insurance
- § 22.5.4—Refinancing The Property
- § 22.5.5—Funding A Revocable Trust, LLC, Or Partnership: Due-On-Sale Or Transfer Clause
- § 22.5.6—Property And Casualty Insurance

#### § 22.6 MISCELLANEOUS

- § 22.6.1—Environmental Issues
- § 22.6.2—Note And Deed Of Trust (Mortgage) Held By Client Is Not Real Property

- § 22.6.3—Deed Executed Prior To Death, For Recording After Death
- § 22.6.4—Creating A Legal Life Estate
- § 22.6.5—Beneficiary Deeds
- § 22.6.6—Deed Includes Vacated Street, Alley, Or Other Adjoining Right-Of-Way
- § 22.6.7—Notice Of Foreclosure For Estate Troubled Assets
- § 22.6.8—Leasing Brokers' Right To Lien Commercial Real Estate
- § 22.6.9—Recording Required For An Effective Real Property Disclaimer
- § 22.6.10—Wind Energy Statute Requires Recording Of All Wind Energy Agreements In The County Real Estate Records
- § 22.6.11—Legislative Declaration Regarding Effectiveness Of Recorded Deed Of Trust Missing Legal Description
- § 22.6.12—Limited Exemption Of Persons, Estates, Trusts, And Attorneys
  From Mortgage Loan Originator Licensing And Mortgage
  Company Registration Act
- § 22.6.13—Colorado Civil Union Act
- § 22.6.14—Changes In Obligation Of Title Insurance Agent And Title
  Insurance Company To Provide County Certificate Of Taxes
  Due Along With Title Insurance Commitment
- § 22.6.15—Colorado Real Estate Title Standards Entities
- § 22.6.16—Real Property Owned Individually By A Member Of A
  Partnership May Become A Partnership Asset Without A
  Written Conveyance Complying With The Statute Of Frauds

#### **Chapter 23 POWERS OF APPOINTMENT**

#### § 23.1 INTRODUCTION

#### § 23.2 **DEFINITIONS**

- § 23.2.1—Donor
- § 23.2.2—Powerholder Or Donee
- § 23.2.3—Appointive Property Or Property Subject To The Power
- § 23.2.4—Appointees
- § 23.2.5—Takers In Default Of Appointment
- § 23.2.6—Presently Exercisable Power Of Appointment
- § 23.2.7—Powers Of Appointment Defined
- § 23.2.8—General Power Of Appointment Versus Nongeneral Power Of Appointment

TOC-30 (11/16)

#### § 23.3 DEALING WITH POWERS

- § 23.3.1—Creation Of Powers
- § 23.3.2—Exercise Of Powers
- § 23.3.3—Special Problems Of Exercise
- § 23.3.4—Renunciation Or Disclaimer Of Powers
- § 23.3.5—Release Of Powers
- § 23.3.6—Lapse Of Powers
- § 23.3.7—Takers In Default

#### § 23.4 TAXATION OF POWERS

- § 23.4.1—Taxation Of Powers In General
- § 23.4.2—Federal Estate Tax Post-1942 General Power Of Appointment
- § 23.4.3—Federal Estate Tax Pre-1942 General Power Of Appointment
- § 23.4.4—Federal Estate Tax Nongeneral Power Of Appointment
- § 23.4.5—Federal Estate Tax Rules Applicable To Nongeneral Powers
- § 23.4.6—Federal Gift Tax Post-1942 General Power Of Appointment
- § 23.4.7—Federal Gift Tax Pre-1942 General Power Of Appointment
- § 23.4.8—Federal Income Tax Powerholder's Power To Vest Trust Property In Himself Or Herself
- § 23.4.9—Generation-Skipping Transfer Tax Issues
- § 23.4.10—Colorado Income Tax Issues

#### § 23.5 ESTATE PLANNING AND DRAFTING CONSIDERATIONS

- § 23.5.1—Advantages Of Powers
- § 23.5.2—Importance Of Clear Drafting
- § 23.5.3—Create Nongeneral Powers Carefully
- § 23.5.4—Consider Generation-Skipping Transfer Tax Issues

#### § 23.6 RULE AGAINST PERPETUITIES

- § 23.6.1—Powers Of Appointment With Respect To Interests In Trusts
- § 23.6.2—Non-Trust Powers Of Appointment
- § 23.6.3—Reformation

#### § 23.7 CONCLUSION

### **VOLUME 2**

Chapter 24	FIDUCIARIES				
	§ 24.1	TYPES OF FIDUCIARIES			
	§ 24.2	MULTIPLE FIDUCIARIES			
	§ 24.3	FIDUCIARY DUTIES			
	3 –				
		§ 24.3.1—Personal Representatives			
		§ 24.3.2—Custodians			
		§ 24.3.3—Guardians And Conservators			
		§ 24.3.4—Trustees § 24.3.5—Life Insurance Trusts			
		§ 24.3.5—Life insurance Trusts			
	§ 24.4	EXCULPATION OF FIDUCIARIES			
	§ 24.5	REMEDIES AGAINST FIDUCIARIES			
		§ 24.5.1—Constructive And Resulting Trusts			
		§ 24.5.2—Third-Party Trustee Doctrine			
		§ 24.5.3—Surcharge			
		§ 24.5.4—Exemplary Damages			
		§ 24.5.5—Attorney Fees			
	§ 24.6	REMOVAL OF FIDUCIARY			
		§ 24.6.1—Terms Of Instrument			
		§ 24.6.2—Tax Implications			
		§ 24.6.3—Court Proceedings			
	§ 24.7	FIDUCIARY ACCOUNTING			
		§ 24.7.1—Colorado Uniform Principal And Income Act			
		§ 24.7.2—Principles Of Fiduciary Accounting			
	§ 24.8	COMPENSATION			
		§ 24.8.1—Personal Representative Fees			
		§ 24.8.2—Trustee Fees			
		§ 24.8.3—Fiduciary Fees			
		§ 24.8.4—Tax Implications			
		§ 24.8.5—Possible Conflicts Of Interest			

TOC-32 (11/16)

#### § 24.9 SUCCESSION

- § 24.9.1—Method Of Selection
- § 24.9.2—Tax Considerations
- § 24.9.3—Court Proceedings
- § 24.9.4—Powers Of Successors

#### **Chapter 25 ADMINISTRATIVE POWERS**

#### § 25.1 INTRODUCTION

- § 25.1.1—Scope Of This Chapter
- § 25.1.2—Sources Of Administrative Powers: Statute And The Governing Instrument
- § 25.1.3—Usage Of Forms In *Colorado Estate Planning Forms Orange Book Forms*

# § 25.2 COLORADO FIDUCIARIES' POWERS ACT (ACT) AND COLORADO PROBATE CODE (CPC)

- § 25.2.1—In General Colorado Fiduciaries' Powers Act
- § 25.2.2—Scope Of The Act
- § 25.2.3—Colorado Probate Code

#### § 25.3 CONTINUING NEED FOR EXPRESS POWERS

- § 25.3.1—Jurisdiction In Which Act Is Inapplicable; Ancillary Fiduciaries
- § 25.3.2—Special Situations Demanding Expansive Powers
- § 25.3.3—Matters Not Covered By The Fiduciary Powers Act; Prudent Investor Standards

#### § 25.4 REVIEW OF PARTICULAR POWERS

- § 25.4.1—Limitation Of Powers Provided Under The Act
- § 25.4.2—Mandating Actions
- § 25.4.3—Retention Of Original Assets
- § 25.4.4—Investment Powers
- § 25.4.5—Real And Personal Property
- § 25.4.6—Borrowing And Encumbering From Others Or Self
- § 25.4.7—Self-Dealing; Undivided Interests
- § 25.4.8—Compromising Claims; Litigation
- § 25.4.9—Corporate Securities
- § 25.4.10—Business Interests
- § 25.4.11—Nominees
- § 25.4.12—Trust Accounting

#### Colorado Estate Planning Handbook

- § 25.4.13—Trust Reports
- § 25.4.14—Tax Elections
- § 25.4.15—Attorneys, Agents, And Investment Advisors
- § 25.4.16—Distributions In Cash Or Kind
- § 25.4.17—Distribution Alternatives; Postponed Distributions
- § 25.4.18—Early Termination Of Trust; Interested Trustee
- § 25.4.19—Receiving Additions
- § 25.4.20—Dealing With Other Entities Created By Settlor
- § 25.4.21—Third Persons
- § 25.4.22—Successor Fiduciaries
- § 25.4.23—Insurance And Death Benefits Received By Trustee
- § 25.4.24—Unproductive Property
- § 25.4.25—Commingling Trust Funds; Consolidating Or Dividing Trusts
- § 25.4.26—Disclaimer Or Release Of Powers And Rights
- § 25.4.27—Corporate Fiduciary And Custody Of Assets
- § 25.4.28—Majority Control; Delegation To Co-Fiduciary
- § 25.4.29—Trustee's Powers And Responsibilities Concerning Insurance Policies
- § 25.4.30—Permissible Location Of Estate Or Trust Property; Changing Situs Of Administration
- § 25.4.31—Fiduciary Compensation, Protection, And Procedures: Compensation, Reliance On Evidence, Exemption From Bond, Protection And Exoneration, And Court Proceedings
- § 25.4.32—Duty To Inquire Into The Circumstances Of The Beneficiary
- § 25.4.33—Dealing With Digital Assets
- § 25.4.34—Decanting

#### § 25.5 UNIFORM PRUDENT INVESTOR ACT

- § 25.5.1—Background
- § 25.5.2—Application Of The Prudent Investor Rule
- § 25.5.3—Prior Law Prudent Man Rule
- § 25.5.4—Contrast With The Prudent Man Rule
- § 25.5.5—Importance Of The Overall Investment Strategy Versus Individual Investments
- § 25.5.6—Risk And Return
- § 25.5.7—Categoric Restrictions On Types Of Investments Removed
- § 25.5.8—Diversification Of Investments Within The Portfolio
- § 25.5.9—Delegation Of Duties
- § 25.5.10—Duties Of Loyalty And Impartiality
- § 25.5.11—Investment Process
- § 25.5.12—Drafting To Modify The Effect Of The Uniform Prudent Investor Act

TOC-34 (11/16)

#### § 25.6 UNIFORM PRINCIPAL AND INCOME ACT

- § 25.6.1—Background
- § 25.6.2—Application Of The Uniform Principal And Income Act
- § 25.6.3—Prudent Investor Act And The Power To Adjust Under The Uniform Principal And Income Act
- § 25.6.4—Factors To Consider In Deciding Whether And To What Extent To Adjust
- § 25.6.5—Notice Of Act And Limit Of Liability
- § 25.6.6—Colorado Unitrust Conversion Statute Amendment
- § 25.6.7—Drafting To Modify The Effect Of The Uniform Principal And Income Act

#### **EXHIBIT**

Exhibit 25A—Specimen Forms

### Chapter 26 DRAFTING AND INTERPRETATION OF DISCRETIONARY DISTRIBUTION STANDARDS

#### § 26.1 INTRODUCTION

#### § 26.2 MEANING OF COMMONLY USED STANDARDS

- § 26.2.1—Health, Support, And Maintenance
- § 26.2.2—Education
- § 26.2.3—Terms Granting Broad Discretion
- § 26.2.4—Terms Granting Narrow Discretion
- § 26.2.5—Expanded Discretion

#### § 26.3 CONSIDERATION OF A BENEFICIARY'S OTHER RESOURCES

- § 26.3.1—Duty To Consider Other Resources
- § 26.3.2—What Resources To Consider?

#### § 26.4 MULTIPLE BENEFICIARIES

- § 26.4.1—When The Language Indicates No Preference
- § 26.4.2—Tax Considerations

#### § 26.5 COURT INTERVENTION IN EXERCISES OF DISCRETION

#### § 26.6 TAX CONSIDERATIONS

§ 26.6.1—Use Of Ascertainable Standards

§ 26.6.2—Colorado Savings Statute

#### § 26.7 CONCLUSION

#### **Chapter 27** RESERVED

#### **Chapter 28 CONTRACTS TO WILL**

#### § 28.1 IN GENERAL — DEFINITIONS

- § 28.1.1—Background
- § 28.1.2—Colorado Statutes
- § 28.1.3—Joint Wills
- § 28.1.4—Mutual Wills
- § 28.1.5—Reciprocal Wills
- § 28.1.6—Specific Uses

#### § 28.2 VALIDITY AND REQUISITES OF CONTRACT

- § 28.2.1—Colorado Probate Code
- § 28.2.2—Elements Of A Valid Contract
- § 28.2.3—Importance Of Written Contract

#### § 28.3 TAX IMPLICATIONS

- § 28.3.1—Loss Of Marital Deduction
- § 28.3.2—Gift Tax
- § 28.3.3—Impact On Estate Planning For Surviving Spouse
- § 28.3.4—Possible Disallowance Of I.R.C. § 2053 Deduction

#### § 28.4 DISADVANTAGES

- § 28.4.1—Disadvantages Of Joint Wills
- § 28.4.2—Tax Problems
- § 28.4.3—Beneficiaries May Have Vested Interests

#### § 28.5 REVOCABILITY

§ 28.5.1—In General

TOC-36 (11/16)

#### § 28.6 ENFORCEMENT

- § 28.6.1—During Lifetime Of Parties
- § 28.6.2—Claim Against Estate Of Promisor
- § 28.6.3—Specific Performance Constructive Trust
- § 28.6.4—Statute Of Wills
- § 28.6.5—Comparison With The Statute Of Frauds
- § 28.6.6—No Presumptions Created
- § 28.6.7—Proof Required Dead Man's Statute
- § 28.6.8—Title To Real Property
- § 28.6.9—Conflict Of Laws

#### Chapter 29 COMMUNITY PROPERTY

#### § 29.1 INTRODUCTION

#### § 29.2 OVERVIEW OF COMMUNITY PROPERTY SYSTEM

- § 29.2.1—History
- § 29.2.2—Community Property Defined
- § 29.2.3—Commingling Of Property
- § 29.2.4—Rebuttable Presumption Of Community Property
- § 29.2.5—Tracing To Determine Character Of Property
- § 29.2.6—Creating And Severing Community Property By Agreement
- § 29.2.7—Community Property Held In Joint Tenancy
- § 29.2.8—Management Rights In Community Property
- § 29.2.9—Rights Of Creditors
- § 29.2.10—Income Taxation
- § 29.2.11—Severance Of Community Relationship At Death, Divorce, Or Legal Separation
- § 29.2.12—Community Property And Same-Sex Couples

#### § 29.3 DISPOSITION OF COMMUNITY PROPERTY DURING LIFE

- § 29.3.1—Gifts Between Spouses
- § 29.3.2—Transfers To Third Parties

#### § 29.4 DISPOSITION OF COMMUNITY PROPERTY AT DEATH

- § 29.4.1—Testamentary Disposition
- § 29.4.2—Intestate Succession
- § 29.4.3—Disclaimers
- § 29.4.4—Adjustments To Basis
- § 29.4.5—Uniform Disposition Of Community Property Rights At Death Act

#### § 29.5 ESTATE PLANNING CONSIDERATIONS

- § 29.5.1—Maintaining Community Property Character
- § 29.5.2—Use Of Revocable Trusts
- § 29.5.3—Life Insurance
- § 29.5.4—Qualified Retirement Plan Benefits

#### **Chapter 30 MARITAL AGREEMENTS**

#### § 30.1 INTRODUCTION TO MARITAL AGREEMENTS

- § 30.1.1—Historical Overview
- § 30.1.2—2013, 2014, And 2015 Changes
- § 30.1.3—Definitions
- § 30.1.4—Purposes Of Marital Agreements

#### § 30.2 UNIFORM PREMARITAL AGREEMENT ACT (UPAA)

- § 30.2.1—Basic Provisions Of The UPAA
- § 30.2.2—Grounds For Attacking Premarital Agreements Under The UPAA

#### § 30.3 COLORADO STATUTES PERMITTING MARITAL AGREEMENTS

- § 30.3.1—Statutory Requirements For An Enforceable Marital Agreement In Colorado CMAA (Prior To July 1, 2014)
- § 30.3.2—Statutory Requirements For An Enforceable Marital Agreement In Colorado — UPMAA (On Or After July 1, 2014)

#### § 30.4 CONSIDERATIONS FOR DIVORCE

- § 30.4.1—Spouse's Or Civil Union Partner's Property Rights Without A Marital Agreement
- § 30.4.2—Modification Of Rights Under A Marital Agreement

#### § 30.5 WAIVER OF RIGHTS AT DEATH

- § 30.5.1—Rights Of A Surviving Spouse
- § 30.5.2—General Waivers Of Statutory Rights
- § 30.5.3—Community Property Rights
- § 30.5.4—Rights In Retirement Plans
- § 30.5.5—Provisions Granting Certain Rights
- § 30.5.6—Estate Planning
- § 30.5.7—Provisions For Breach Of Agreement
- § 30.5.8—Other Provisions

TOC-38 (11/16)

#### § 30.6 TAX CONSIDERATIONS

- § 30.6.1—Taxes During Marriage
- § 30.6.2—Tax On Transfers Related To A Divorce
- § 30.6.3—Death Of One Spouse During The Marriage

#### § 30.7 PRACTICAL SUGGESTIONS

#### Chapter 31 MARITAL DISSOLUTION AND ESTATE PLANNING

#### § 31.1 GENERAL CONSIDERATIONS

- § 31.1.1—Introduction
- § 31.1.2—Marital And Separate Property
- § 31.1.3—Dissolution Of Marriage And Surviving Spouse
- § 31.1.4—Ethical Considerations
- § 31.1.5—Temporary Injunction

### § 31.2 IMPACT OF MARITAL DISSOLUTION ON EXISTING ESTATE PLANS

- § 31.2.1—Overview
- § 31.2.2—Trusts
- § 31.2.3—Life Insurance
- § 31.2.4—Joint Tenancies
- § 31.2.5—Pension Benefits, Individual Retirement Accounts, And Other Contractual Benefits
- § 31.2.6—Fiduciary Nominations And Powers Of Attorney
- § 31.2.7—Notice To Payors
- § 31.2.8—Planning Opportunities
- § 31.2.9—Designation Of Guardian
- § 31.2.10—Intestate Share
- § 31.2.11—Elective Share Of Spouse
- § 31.2.12—Gift Tax Consequences
- § 31.2.13—Estate Tax Consequences

#### § 31.3 PLANNING FOR A COUPLE'S POSSIBLE DIVORCE

- § 31.3.1—Marital Agreements
- § 31.3.2—Separation Agreements
- § 31.3.3—Waiver Of Right To Spouse's Estate
- § 31.3.4—Effect Of Transfers Between Spouses On Marital Estate
- § 31.3.5—Gifts To Minor Children

#### § 31.4 PLANNING FOR DIVORCE OF BENEFICIARIES

- § 31.4.1—Gifts To Adult Children
- § 31.4.2—Estate Plans Of Third Parties

#### § 31.5 SAME-SEX MARRIAGE AND CIVIL UNIONS

- § 31.5.1—Same-Sex Marriage
- § 31.5.2—Colorado's Civil Union Act

#### **Chapter 32 EMPLOYEE BENEFITS**

#### § 32.1 TYPES OF RETIREMENT PLANS

#### § 32.2 QUALIFIED PLANS

- § 32.2.1—Definition Of Qualified Plan
- § 32.2.2—Types Of Qualified Plans
- § 32.2.3—Choosing Between Types Of Plans
- § 32.2.4—Plans Of Self-Employed Individuals
- § 32.2.5—Plans Of Tax-Exempt Organizations
- § 32.2.6—Governmental Plans
- § 32.2.7—Internal Revenue Code Qualification Requirements
- § 32.2.8—Timing Of Contributions
- § 32.2.9—Timing And Form Of Distributions
- § 32.2.10—Application Of Employee Retirement Income Security Act Of 1974 (ERISA) To Qualified Plans
- § 32.2.11—Taxation Of Contributions To Qualified Plans
- § 32.2.12—Taxation Of Qualified Plans
- § 32.2.13—Federal Taxation Of Distributions
- § 32.2.14—Colorado Taxation Of Distributions

#### § 32.3 SIMPLIFIED EMPLOYEE PENSION (SEP)

- § 32.3.1—Definition
- § 32.3.2—Participation
- § 32.3.3—Contributions
- § 32.3.4—Permitted Disparity (Integration) Rules
- § 32.3.5—Limitations On Contributions
- § 32.3.6—Discrimination Prohibited
- § 32.3.7—No Vesting Schedule Permitted
- § 32.3.8—Top-Heavy Requirements
- § 32.3.9—Distributions And Excise Taxes
- § 32.3.10—SEP With A Salary Reduction Feature Repealed Prospectively

TOC-40 (11/16)

#### § 32.4 SMALL EMPLOYER INCENTIVE MATCH PLAN (SIMPLE)

- § 32.4.1—Creation Of The SIMPLE Plan
- § 32.4.2—SIMPLE Plan In An IRA Format
- § 32.4.3—SIMPLE Plan In A 401(k) Plan Format
- § 32.4.4—Advantages Of The SIMPLE Plan
- § 32.4.5—Disadvantages Of The SIMPLE Plan

#### § 32.5 REGULAR INDIVIDUAL RETIREMENT ACCOUNTS (IRAs)

- § 32.5.1—Requirements
- § 32.5.2—Taxation Of IRAs
- § 32.5.3—Contributions
- § 32.5.4—Tax Treatment Of Distributions From IRAs
- § 32.5.5—Excise Taxes Applicable To IRAs
- § 32.5.6—Required Distributions
- § 32.5.7—Investment Of IRA Assets

#### § 32.6 ROTH IRAs — NONDEDUCTIBLE TAX-FREE IRAS

- § 32.6.1—Regular Contributions To A Roth IRA
- § 32.6.2—Distributions From A Roth IRA
- § 32.6.3—Rollover Contributions To A Roth IRA

#### § 32.7 NONQUALIFIED DEFERRED COMPENSATION PLANS

- § 32.7.1—Top Hat Plans Or Supplemental Executive Retirement Plans (SERPs)
- § 32.7.2—Excess Benefit Plans
- § 32.7.3—Tax Consequences During The Life Of The Employee
- § 32.7.4—Tax Consequences Of Distributions After Death
- § 32.7.5—Impact Of I.R.C. § 409A On Nonqualified Deferred Compensation

#### § 32.8 STOCK PLANS

- § 32.8.1—Incentive Stock Option Plans
- § 32.8.2—Nonqualified Stock Option Plans
- § 32.8.3—Stock Appreciation Rights (SARs)
- § 32.8.4—Restricted Stock Units Or Phantom Stock Plans

#### § 32.9 OTHER EMPLOYEE BENEFITS

- § 32.9.1—Group Term Life Insurance
- § 32.9.2—Accident Or Health Insurance Plans
- § 32.9.3—Dependent Care Assistance Plans
- § 32.9.4—Scholarships And Qualified Tuition Reductions
- § 32.9.5—Cafeteria Plans
- § 32.9.6—Fringe Benefits

#### **Chapter 33 ASSET PROTECTION**

#### § 33.1 INTRODUCTION

- § 33.1.1—Definition Of Asset Protection
- § 33.1.2—Who Needs Asset Protection Planning

#### § 33.2 COLORADO STRATEGIES

- § 33.2.1—Insurance
- § 33.2.2—Titling And Gifts
- § 33.2.3—Disclaimers
- § 33.2.4—Business Entities
- § 33.2.5—Marital Agreements
- § 33.2.6—Exemptions
- § 33.2.7—Retirement Plans
- § 33.2.8—Trusts

#### § 33.3 ASSET PROTECTION TRUST (APT) OVERVIEW

- § 33.3.1—Discussion Of C.R.S. § 38-10-111
- § 33.3.2—Offshore Asset Protection Trust (OAPT)
- § 33.3.3—Domestic Asset Protection Trust (DAPT)

#### § 33.4 CAVEATS

- § 33.4.1—Know The Client
- § 33.4.2—Fraudulent Conveyance
- § 33.4.3—Lawyer Liability
- § 33.4.4—Failure To Advise

TOC-42 (11/16)

#### Chapter 34 FARM AND RANCH ESTATE PLANNING

#### § 34.1 INTRODUCTION AND TRANSACTIONAL BACKGROUND

# § 34.2 BASIC FINANCIAL FACTORS AFFECTING TRANSITION PLANNING

- § 34.2.1—The Problem Of Agricultural Debt
- § 34.2.2—The Cost Of Separating On-Farm And Off-Farm Inheritances
- § 34.2.3—Transition To The Next Generation Through Lifetime Sales

# § 34.3 ESTATE AND GIFT TAX ISSUES AFFECTING FARMERS AND RANCHERS

- § 34.3.1—Federal Estate Tax Basics
- § 34.3.2—The Marital Deduction
- § 34.3.3—The Special Use Value Election Under I.R.C. § 2032A
- § 34.3.4—I.R.C. § 6166 Deferral Of Estate Tax Payment
- § 34.3.5—Effect Of Gifts On The Federal Estate Tax
- § 34.3.6—Basis Adjustments At Death

# § 34.4 ALTERNATE METHODS OF INTERGENERATIONAL TRANSITION

- § 34.4.1—Handling Production Assets
- § 34.4.2—Contract Sales
- § 34.4.3—Lease Arrangements

#### § 34.5 FUNCTION OF BUSINESS ENTITIES IN FARM PLANNING

- § 34.5.1—Selection Of Business Entity
- § 34.5.2—The Effect Of Business Entity Valuation Adjustments On Gifts And Inheritance
- § 34.5.3—Succession Through The Use Of Business Entities

# § 34.6 FAMILY STRATEGIC PLANNING — SEPARATION OF HEIRS WITH DIFFERING GOALS

- § 34.6.1—Coping With The Problem Of Inheritance To Off-Farm Heirs
- § 34.6.2—Funding Buy-Outs Among Heirs
- § 34.6.3—Life Insurance To Augment The Inheritance Of Off-Farm Heirs
- § 34.6.4—Life Insurance To Fund Estate Tax Payment

# § 34.7 SPECIAL ASPECTS OF RETIREMENT PLANNING FOR FARMERS AND RANCHERS

- § 34.7.1—The Effect Of Cash Basis Accounting
- § 34.7.2—Debentures For Retirement Purposes
- § 34.7.3—Limited Partnerships
- § 34.7.4—Lease Rentals As Retirement Income
- § 34.7.5—Consulting Fees And Deferred Compensation
- § 34.7.6—Installment Sales In Retirement Planning
- § 34.7.7—Tax-Deferred Retirement Plans
- § 34.7.8—Basic Health Care Planning For Farmers And Ranchers

#### § 34.8 FORMS

#### **Chapter 35 SPECIAL USE VALUATION**

#### § 35.1 INTRODUCTION

#### § 35.2 QUALIFICATION REQUIREMENTS

- § 35.2.1—Citizen Or Resident Of The United States
- § 35.2.2—Qualified Real Property
- § 35.2.3—50 Percent Test
- § 35.2.4—25 Percent Test
- § 35.2.5—Material Participation
- § 35.2.6—Active Management
- § 35.2.7—Notice And Agreement

#### § 35.3 VALUATION

- § 35.3.1—Methods Of Valuation
- § 35.3.2—Formula Method
- § 35.3.3—Multiple Factor Method
- § 35.3.4—Value Reduction Limitation

#### § 35.4 POST-DEATH QUALIFICATION

- § 35.4.1—Recapture Tax
- § 35.4.2—Compare Pre-Death And Post-Death Qualification Requirements
- § 35.4.3—Death Of A Qualified Heir
- § 35.4.4—Disposition Of Qualified Property
- § 35.4.5—Cessation Of Qualified Use
- § 35.4.6—Computation Of The Recapture Tax
- § 35.4.7—Two-Year Grace Period
- § 35.4.8—Payment Of Additional Estate Tax

TOC-44 (11/16)

#### *Table of Contents*

- § 35.4.9—Special Lien For Recapture Tax
- § 35.4.10—Basis Adjustment Election

#### § 35.5 PLANNING CONSIDERATIONS

- § 35.5.1—Lifetime Gifts Or Sales
- § 35.5.2—Post-Death Sales
- § 35.5.3—Maintaining The Material Participation Requirement
- § 35.5.4—Maintaining The Qualified Use Requirement
- § 35.5.5—Drafting Considerations
- § 35.5.6—Protective Election
- § 35.5.7—Planning For Husband And Wife
- § 35.5.8—Use Of Valuation Discounts
- § 35.5.9—Generation-Skipping Transfer Tax Planning

#### § 35.6 CONCLUSION

#### **Chapter 36 MULTI-JURISDICTIONAL MATTERS**

#### § 36.1 NATURE OF MULTI-JURISDICTIONAL PROBLEMS

- § 36.1.1—In General
- § 36.1.2—Legislative Solutions
- § 36.1.3—Practical Solutions

# § 36.2 ANCILLARY (FOREIGN) ASSETS IN A COLORADO ESTATE ADMINISTRATION

- § 36.2.1—The Minimal Foreign Asset
- § 36.2.2—The Substantial Foreign Asset
- § 36.2.3—Estate Tax Problems

#### § 36.3 PLANNING TO AVOID ANCILLARY ISSUES

- § 36.3.1—Establishing Domicile
- § 36.3.2—Inter Vivos Dispositions
- § 36.3.3—Redirecting Foreign Assets Received By Descent Or Devise
- § 36.3.4—Changes In Form Of Ownership
- § 36.3.5—Foreign Trusts

#### § 36.4 PLANNING TO MINIMIZE UNAVOIDABLE ANCILLARY ISSUES

- § 36.4.1—Law And Practice Of Foreign Jurisdiction
- § 36.4.2—Effectiveness Of Estate Planning Documents
- § 36.4.3—Dispositive Provisions

- § 36.4.4—Administrative Provisions
- § 36.4.5—Tax Provisions
- § 36.4.6—Non-Dispositive Documents

#### § 36.5 COLORADO ASSETS IN A FOREIGN ESTATE PROCEEDING

- § 36.5.1—In General
- § 36.5.2—Real Property
- § 36.5.3—Personal Property

#### § 36.6 MULTI-NATIONAL ESTATES

- § 36.6.1—Problems
- § 36.6.2—Legal Systems
- § 36.6.3—Estate Planning Considerations

#### § 36.7 PRACTICE MANAGEMENT CONSIDERATIONS

- § 36.7.1—Ethical Obligations
- § 36.7.2—The Planning Process

#### **Chapter 37 CHARITABLE DISPOSITIONS**

#### § 37.1 INTRODUCTION

- § 37.1.1—Meaning Of "Charitable"
- § 37.1.2—Planning Considerations

#### § 37.2 TAX DEDUCTIONS

- § 37.2.1—Federal Income Tax Deduction
- § 37.2.2—Colorado Income Tax Deduction
- § 37.2.3—Federal Gift Tax Deduction
- § 37.2.4—Federal Estate Tax Deduction
- § 37.2.5—Federal Generation-Skipping Transfer Tax
- § 37.2.6—Valuation And Appraisal Requirements

#### § 37.3 FORM OF GIFT OR DEVISE

- § 37.3.1—In General
- § 37.3.2—Transfers Subject To A Condition Or Power
- § 37.3.3—Transfers Subject To Indebtedness
- § 37.3.4—Pledges, Subscriptions, Notes, Checks, And Credit Cards
- § 37.3.5—Contributions Of Services
- § 37.3.6—Transfers Of Partial Interests In Property

TOC-46 (11/16)

#### *Table of Contents*

- § 37.3.7—Gifts Of Income Interests
- § 37.3.8—Distributions From IRAs
- § 37.3.9—Gifts Of Remainder Interests
- § 37.3.10—Charitable Gift Annuities
- § 37.3.11—Conservation Gifts
- § 37.3.12—Private Foundations And Charitable Trusts
- § 37.3.13—Endowed Funds
- § 37.3.14—Indirect Transfers At Death

#### § 37.4 NATURE OF CHARITABLE DONEE

- § 37.4.1—In General
- § 37.4.2—Public Charity Versus Private Foundation
- § 37.4.3—Private Operating Foundations
- § 37.4.4—Community Foundations And Donor-Advised Funds
- § 37.4.5—Supporting Organizations
- § 37.4.6—Governmental Entities
- § 37.4.7—Fraternal Associations And Veterans' Organizations
- § 37.4.8—Foreign Charities

#### § 37.5 ASSURING AN EFFECTIVE CHARITABLE GIFT

- § 37.5.1—Designation Of Purpose
- § 37.5.2—Designation Of Beneficiaries
- § 37.5.3—Designation Of Trustee
- § 37.5.4—Doctrine Of Cy Pres

#### § 37.6 NON-TAX LIMITATIONS ON CHARITABLE DISPOSITIONS

- § 37.6.1—Statutory Limitations On Testamentary Gifts
- § 37.6.2—Statutory Rights Of Family Members
- § 37.6.3—Rule Against Perpetuities
- § 37.6.4—Rule Against Accumulations

#### § 37.7 PLANNING OPPORTUNITIES

- § 37.7.1—Gifts Of Appreciated Property
- § 37.7.2—Gifts Of Life Insurance
- § 37.7.3—Testamentary Gifts Of Retirement Plan Assets

#### **EXHIBIT**

Exhibit 37A—Summary Of Limitations On Federal Income Tax Deductions For Charitable Contributions By Individuals

#### **Chapter 38** SPLIT-INTEREST CHARITABLE TRUSTS § 38.1 INTRODUCTION § 38.2 OVERVIEW OF THE CHARITABLE REMAINDER TRUST (CRT) § 38.2.1—Forms Of CRT § 38.3 **CRT TECHNICAL REQUIREMENTS** § 38.3.1—Basic Requirements For CRTs § 38.3.2—Additional Contributions After Initial Funding § 38.3.3—Governing Instrument Requirements § 38.4 **FUNDING AND VALUATION** § 38.4.1—Appreciated Property § 38.4.2—Unmarketable Assets Generally § 38.4.3—Closely Held C Corporation § 38.4.4—S Corporation Stock § 38.4.5—Partnership Or Limited Liability Company Interests § 38.5 **INCOME, GIFT, AND ESTATE TAX RULES** § 38.5.1—Income Tax And Allocation Of Income And Gains § 38.5.2—Gift Tax § 38.5.3—Estate Tax § 38.6 **PLANNING** § 38.6.1—Use Of CRTs To Achieve Tax-Free Diversification And Defer Capital Gain § 38.6.2—Use Of CRTs As A Source Of Retirement Income § 38.6.3—Unitrust Versus Annuity Trust § 38.7 OVERVIEW OF THE CHARITABLE LEAD TRUST (CLT) § 38.7.1—Introduction § 38.7.2—Forms Of CLT § 38.7.3—Income Tax § 38.7.4—Generation-Skipping Transfer Tax

TOC-48 (11/16)

#### § 38.8 CLT TECHNICAL REQUIREMENTS

- § 38.8.1—In General
- § 38.8.2—Irrevocable Trust
- § 38.8.3—Permissible Charitable And Remainder Beneficiaries
- § 38.8.4—Permissible Term
- § 38.8.5—Form, Amount, And Payment Of Charitable Lead Interest
- § 38.8.6—Application Of The Private Foundation Rules

#### § 38.9 FUNDING AND VALUATION

- § 38.9.1—In General
- § 38.9.2—Appreciated Property
- § 38.9.3—Unmarketable Assets Generally
- § 38.9.4—Closely Held C Corporation
- § 38.9.5—S Corporation Stock
- § 38.9.6—Partnership Or Limited Liability Company Interests

#### § 38.10 TAX DEDUCTIONS

- § 38.10.1—Income Tax Deductions
- § 38.10.2—Gift And Estate Tax Charitable Deductions

#### § 38.11 PLANNING OPPORTUNITIES

- § 38.11.1—Leveraged Wealth Transfer Using A CLT
- § 38.11.2—Transfer Of A Closely Held Business Interest

# Chapter 39 ALLOCATION OF ESTATE AND GENERATION-SKIPPING TRANSFER TAXES

#### § 39.1 FEDERAL ESTATE TAX

- § 39.1.1—Nature And Computation Of Tax
- § 39.1.2—Liability For Tax
- § 39.1.3—Life Insurance Proceeds
- § 39.1.4—Appointed Property
- § 39.1.5—Qualified Terminable Interest Property
- § 39.1.6—Retained Interest Property
- § 39.1.7—Special Issues Concerning Retirement Accounts

#### § 39.2 FEDERAL GENERATION-SKIPPING TRANSFER TAX

- § 39.2.1—Description Of Tax
- § 39.2.2—Liability For Tax
- § 39.2.3—Allocation Of GST Exemption

#### § 39.3 COLORADO ESTATE TAX

§ 39.3.1—Nature And Computation Of Tax

#### § 39.4 EFFECT OF PARTICULAR COLORADO STATUTES

- § 39.4.1—The Colorado Tax Apportionment Statute
- § 39.4.2—Intestate Succession
- § 39.4.3—Spousal Election
- § 39.4.4—Disclaimers
- § 39.4.5—Abatement
- § 39.4.6—Exempt Property And Family Allowances

#### § 39.5 MULTISTATE OWNERSHIP

- § 39.5.1—Domicile And Situs
- § 39.5.2—Movables
- § 39.5.3—Immovables

#### § 39.6 DRAFTING CONSIDERATIONS

- § 39.6.1—General Considerations
- § 39.6.2—Specific Considerations
- § 39.6.3—Sample Apportionment Clauses
- § 39.6.4—Conclusion Guidelines And A Caveat

#### **Chapter 40 ESTATE TAX MARITAL DEDUCTION**

#### § 40.1 IN GENERAL

- § 40.1.1—Origin And Purpose
- § 40.1.2—Summary Of Law

#### § 40.2 BASIC REQUIREMENTS

- § 40.2.1—Citizen Or Resident Of United States
- § 40.2.2—Survived By Spouse
- § 40.2.3—Definition Of "Spouse"

TOC-50 (11/16)

#### Table of Contents

- § 40.2.4—Included In Decedent's Gross Estate
- § 40.2.5—Passing To Surviving Spouse

#### § 40.3 NONDEDUCTIBLE INTERESTS

- § 40.3.1—Not Included In Gross Estate
- § 40.3.2—Nondeductible Terminable Interests
- § 40.3.3—Deductible Debt Or Expense

#### § 40.4 DEDUCTIBLE TERMINABLE INTERESTS

- § 40.4.1—Deductible Terminable Interests
- § 40.4.2—Life Estate With General Power Of Appointment
- § 40.4.3—Qualified Terminable Interest Property (QTIP)
- § 40.4.4—Survivorship Exception
- § 40.4.5—Split Gifts To Spouse And Charity

#### § 40.5 EXTENT OF MARITAL DEDUCTION

- § 40.5.1—Unlimited In Amount
- § 40.5.2—Transitional Rule
- § 40.5.3—Joint Ownership And Community Property

#### § 40.6 MARITAL DEDUCTION PLANNING

- § 40.6.1—Outright Transfers
- § 40.6.2—Marital Trusts In General
- § 40.6.3—Power Of Appointment Trust
- § 40.6.4—Estate Trust
- § 40.6.5—QTIP Trust
- § 40.6.6—QDOT Trust
- § 40.6.7—Retirement Plan Benefits
- § 40.6.8—Tax Consequences Of Power Of Appointment Trust
- § 40.6.9—Tax Consequences Of Estate Trust
- § 40.6.10—Tax Consequences Of QTIP Trust
- § 40.6.11—Tax Consequences Of QDOT Trust

#### § 40.7 DESCRIBING THE MARITAL DEDUCTION GIFT

- § 40.7.1—In General
- § 40.7.2—Formula Gifts
- § 40.7.3—Revenue Procedure 64-19

#### § 40.8 DISPOSITION OF NON-MARITAL PROPERTY

- § 40.8.1—In General
- § 40.8.2—Family Trust: Maximum Benefits To Surviving Spouse
- § 40.8.3—Family Trust: Other Provisions

#### § 40.9 POST-MORTEM PLANNING

- § 40.9.1—Disclaimers
- § 40.9.2—Elective Share
- § 40.9.3—QTIP Election

### § 40.10 DECIDING WHETHER AND HOW TO UTILIZE THE MARITAL DEDUCTION

- § 40.10.1—American Taxpayer Relief Act Of 2012
- § 40.10.2—Utilization Of Marital Deduction
- § 40.10.3—Equalization Of Estates
- § 40.10.4—Conclusion

# Chapter 41 GENERATION-SKIPPING TRANSFER TAX STRATEGIES AND TECHNIQUES

#### § 41.1 INTRODUCTION

#### § 41.2 GENERATION-SKIPPING TRANSFER TAX TERMINOLOGY

- § 41.2.1—Skip Person
- § 41.2.2—Taxable Termination
- § 41.2.3—Taxable Distribution
- § 41.2.4—Direct Skip
- § 41.2.5—Indirect Skip
- § 41.2.6—Generation Assignment

#### § 41.3 EXCLUDED TRANSFERS

- § 41.3.1—Subject To Estate Or Gift Tax
- § 41.3.2—Educational And Medical Expenses
- § 41.3.3—Prior Generation-Skipping Transfer Taxation
- § 41.3.4—Annual Exclusion Gifts
- § 41.3.5—Predeceased Child Or Predeceased Parent Exception

#### § 41.4 AVAILABLE EXEMPTIONS

§ 41.4.1—Generation-Skipping Transfer Tax Exemption

TOC-52 (11/16)

# § 41.5 COMPUTATION OF THE GENERATION-SKIPPING TRANSFER TAX

- § 41.5.1—Overview
- § 41.5.2—Applicable Definitions
- § 41.5.3—Examples

#### § 41.6 WHO PAYS THE GENERATION-SKIPPING TRANSFER TAX?

# § 41.7 GENERATION-SKIPPING TRANSFER TAX REPORTING REQUIREMENTS

- § 41.7.1—Reporting During Life By Donor
- § 41.7.2—Reporting Direct And Indirect Skips At Death
- § 41.7.3—Reporting Taxable Distribution
- § 41.7.4—Reporting Taxable Termination

#### § 41.8 EFFECTIVE DATE PROVISIONS

- § 41.8.1—General Rules
- § 41.8.2—Exceptions

#### § 41.9 OVERVIEW OF PLANNING STRATEGIES

#### § 41.10 USE OF MULTIPLE TRUSTS

#### § 41.11 TAKING ADVANTAGE OF GRANDFATHERING

- § 41.11.1—Overview
- § 41.11.2—Utilize Annual Gift Tax Exclusion
- § 41.11.3—Special Powers Of Appointment
- § 41.11.4—Continuous Mental Disability

#### § 41.12 MAXIMIZING EXCLUDED TRANSFERS

- § 41.12.1—Gift Tax Exclusion Gifts
- § 41.12.2—Education And Medical Expenses

#### § 41.13 MAKING OPTIMAL USE OF EXEMPTIONS

- § 41.13.1—Overview
- § 41.13.2—Allocations
- § 41.13.3—Gift Tax
- § 41.13.4—Reverse QTIP Election
- § 41.13.5—Portability
- § 41.13.6—Planning For Same-Sex Spouses

#### § 41.14 OTHER PLANNING CONSIDERATIONS

- § 41.14.1—Subject Assets To Estate Or Gift Tax
- § 41.14.2—Use Of Disclaimers
- § 41.14.3—Estate Tax Inclusion Period
- § 41.14.4—Crummey Trusts
- § 41.14.5—Miscellaneous Considerations
- § 41.14.6—Qualified Severances

#### § 41.15 CONCLUSION

#### **Chapter 42 SPECIAL VALUATION RULES**

#### § 42.1 INTRODUCTION AND BACKGROUND

- § 42.1.1—Introduction And Purpose
- § 42.1.2—History And Background

# § 42.2 I.R.C. § 2701 — SPECIAL VALUATION RULES IN CASE OF TRANSFERS OF INTERESTS IN CORPORATIONS OR PARTNERSHIPS

- § 42.2.1—Definitions
- § 42.2.2—I.R.C. § 2701 Special Valuation Rule
- § 42.2.3—Deemed Transfers
- § 42.2.4—Minimum Valuation Of Junior Equity Interests
- § 42.2.5—Qualified Payment Elections
- § 42.2.6—Framework For Evaluating Application Of I.R.C. § 2701

# § 42.3 I.R.C. § 2702 — SPECIAL VALUATION RULES IN CASE OF TRANSFERS OF INTERESTS IN TRUSTS

- § 42.3.1—Definitions
- § 42.3.2—General Rule Of I.R.C. § 2702
- § 42.3.3—Exceptions To I.R.C. § 2702
- § 42.3.4—Joint Purchases
- § 42.3.5—Term Interests In Tangible Property
- § 42.3.6—Planning Considerations For I.R.C. § 2702

# § 42.4 I.R.C. § 2703 — CERTAIN RIGHTS AND RESTRICTIONS DISREGARDED

- § 42.4.1—General Rule Of I.R.C. § 2703
- § 42.4.2—Statutory Exception
- § 42.4.3—Regulatory Exception

TOC-54 (11/16)

#### *Table of Contents*

- § 42.4.4—Multiple Rights Or Restrictions
- § 42.4.5—Effective Date And Substantial Modifications
- § 42.4.6—Prior Law
- § 42.4.7—IRS Attempts To Disregard Entity Under I.R.C. § 2703
- § 42.4.8—Planning Considerations

### § 42.5 I.R.C. § 2704 — TREATMENT OF CERTAIN LAPSING RIGHTS AND RESTRICTIONS

- § 42.5.1—Definitions
- § 42.5.2—General Rule Of I.R.C. § 2704(a)
- § 42.5.3—Exceptions To I.R.C. § 2704(a)
- § 42.5.4—Amount Of The Transfer Under I.R.C. § 2704(a)
- § 42.5.5—Miscellaneous Rules Of I.R.C. § 2704(a)
- § 42.5.6—Planning Considerations For I.R.C. § 2704(a)
- § 42.5.7—General Rule Of I.R.C. § 2704(b)
- § 42.5.8—Planning Considerations For I.R.C. § 2704(b)

#### **Chapter 43 ADVANCED ESTATE PLANNING TECHNIQUES**

- § 43.1 OVERVIEW
- § 43.2 CONCEPT OF THE SEPARATION OF INCOME TAX OWNERSHIP AND ESTATE TAX OWNERSHIP
- § 43.3 LEVERAGE CONCEPT
- § 43.4 ANNUITY MODEL
  - § 43.4.1—GRAT
  - § 43.4.2—Private Annuity
  - § 43.4.3—New Developments Regarding Private Annuities And Annuity Trusts

#### § 43.5 INSTALLMENT SALE MODEL

- § 43.5.1—IDGTs
- § 43.5.2—New Developments Regarding IDGTs
- § 43.5.3—SCINs
- § 43.5.4—New Developments Regarding SCINs

# § 43.6 ILLUSTRATION OF THE ANNUITY AND INSTALLMENT SALE MODELS

#### § 43.7 IMPACT OF PORTABILITY ON GRANTOR TRUST PLANNING

	§ 43.8	INCOME SHIFTING MODEL — THE BENEFICIARY GRANTOR TRUST <sup>SM</sup>			
	§ 43.9	RECAPITALIZATION MODEL			
	§ 43.10	LONG-TERM APPRECIATED FUTURE GIFT MODEL			
	§ 43.11	SUMMARY			
	§ 43.12	ALERT REGARDING FEDERAL TAX LEGISLATION			
Chapter 44	ESTATE, GIFT, AND INCOME TAXATION OF NONRESIDENT/ NONCITIZEN ALIEN INDIVIDUALS				
	§ 44.1	INTRODUCTION			
		§ 44.1.1—Controlling Law § 44.1.2—U.S. Transfer Tax System And Nonresident Aliens/Noncitizens (NRNCs)			
	§ 44.2	THE TAX NEXUS			
		§ 44.2.1—NRNC/Transfer Taxes § 44.2.2—Income Tax — Residency			
	§ 44.3	ESTATE TAXATION			
		§ 44.3.1—The U.S. Estate § 44.3.2—Situs Rules § 44.3.3—Estate Tax Calculation And Rate § 44.3.4—Treaty Impact			
	§ 44.4	GIFT TAXATION			
		§ 44.4.1—Overview § 44.4.2—Situs Rules § 44.4.3—Gift Tax Calculation And Rate			

GENERATION-SKIPPING TRANSFER TAX

§ 44.5

TOC-56 (11/16)

#### § 44.6 EXPATRIATION AND FOREIGN TRUSTS

- § 44.6.1—Expatriation On Or After June 17, 2008
- § 44.6.2—Expatriation Prior To June 17, 2008
- § 44.6.3—Taxation Of U.S. Beneficiaries Of Foreign Trusts
- § 44.6.4—Reporting Requirements

#### § 44.7 INCOME TAXATION

- § 44.7.1—Source Of Income Rules
- § 44.7.2—Noneffectively Connected Income
- § 44.7.3—Effectively Connected Income (ECI)
- § 44.7.4—Partnerships Special Rules

# § 44.8 FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980 (FIRPTA)

- § 44.8.1—U.S. Real Property Interest (USRPI) Definition
- § 44.8.2—Form Of Ownership Interest
- § 44.8.3—Taxable Event
- § 44.8.4—Tax And Withholding
- § 44.8.5—Income Tax Credits

#### § 44.9 OTHER MATTERS

#### § 44.10 CONCLUSION

#### § 44.11 BIBLIOGRAPHY

#### **Chapter 45 GRANTOR RETAINED ANNUITY TRUSTS**

#### § 45.1 GRAT PLANNING — GENERAL BACKGROUND

- § 45.1.1—Description
- § 45.1.2—Goals
- § 45.1.3—Valuation
- § 45.1.4—When GRAT Planning Works Best
- § 45.1.5—Selected Governing Instrument Requirements
- § 45.1.6—Tax Consequences

#### § 45.2 TYPICAL FEATURES OF A "CLASSIC GRAT"

- § 45.2.1—Funding Asset
- § 45.2.2—Zeroed-Out Structure
- § 45.2.3—Short-Term GRATs

- § 45.2.4—Liquidity To Fund Annuity Payments
- § 45.2.5—Drafting
- § 45.2.6—Performance Management

#### § 45.3 KEY BENEFITS FROM GRAT PLANNING

- § 45.3.1—Financial Security
- § 45.3.2—Control
- § 45.3.3—Risk Management
- § 45.3.4—Flexibility
- § 45.3.5—Clarity
- § 45.3.6—Tax Efficiency

#### § 45.4 INTEGRATION WITH OTHER STRATEGIES

- § 45.4.1—GRAT Plus Intra-Family Loan
- § 45.4.2—GRAT Plus Installment Sale To Defective Grantor Trust
- § 45.4.3—GRAT Plus Irrevocable Life Insurance Trust
- § 45.4 4—GRATs By Husband And Wife

#### § 45.5 SPECIFIC CHALLENGES AND OPPORTUNITIES

- § 45.5.1—Specific Challenges
- § 45.5.2—Specific Opportunities

# § 45.6 COMPARISON TO INSTALLMENT SALES TO INTENTIONALLY DEFECTIVE GRANTOR TRUSTS

- § 45.6.1—General Background Regarding Sales To Grantor Trusts
- § 45.6.2—Typical Structure And Steps Of IDIT Sale
- § 45.6.3—Commonly Cited Advantages Of IDIT Sales (versus GRATs)
- § 45.6.4—Key Scenarios In Which GRATs Can Be Superior To IDIT Sales

#### **Chapter 46 PROTECTED PERSONS**

#### **§ 46.1** MINORS

- § 46.1.1—In General
- § 46.1.2—Omitted Children
- § 46.1.3—After-Born Heirs
- § 46.1.4—Wills And Powers Of Appointment
- § 46.1.5—Gifts By Or To Minors
- § 46.1.6—Facility Of Transfer
- § 46.1.7—Guardians Of Minors
- § 46.1.8—The Indian Child Welfare Act

TOC-58 (11/16)

#### § 46.2 INCAPACITATED PERSONS

- § 46.2.1—In General
- § 46.2.2—Definitions
- § 46.2.3—Testamentary Appointment Of Guardian
- § 46.2.4—Court Appointment Of Guardian
- § 46.2.5—Priorities For Appointment As Guardian
- § 46.2.6—Emergency Guardian
- § 46.2.7—Successor Guardian
- § 46.2.8—General Duties And Powers Of Guardian
- § 46.2.9—Termination Of Guardianship

#### § 46.3 PROTECTED PERSONS

- § 46.3.1—In General
- § 46.3.2—Definitions
- § 46.3.3—Small Estates
- § 46.3.4—Court Appointment Of Conservator And Other Protective Orders
- § 46.3.5—Priorities For Appointment As Conservator
- § 46.3.6—Special Conservator
- § 46.3.7—Successor Conservator
- § 46.3.8—Foreign Conservators
- § 46.3.9—General Duties And Powers Of Conservator
- § 46.3.10—Conservator's Bond
- § 46.3.11—Termination Of Conservatorship
- § 46.3.12—Single Transactions And Personal Injury Settlements

# § 46.4 ADDITIONAL PROVISIONS CONCERNING INCAPACITATED PERSONS AND PROTECTED PERSONS

- § 46.4.1—Powers Of Attorney
- § 46.4.2—Multiple-Party Accounts
- § 46.4.3—Clauses In Instruments

#### § 46.5 OTHER PERSONS UNDER DISABILITY

- § 46.5.1—Absentees
- § 46.5.2—Military Personnel

#### § 46.6 ADOPTED CHILDREN AND THEIR DESCENDANTS

- § 46.6.1—Status
- § 46.6.2—Intestate Succession

#### § 46.7 ILLEGITIMATE CHILDREN

- § 46.7.1—Inheritance
- § 46.7.2—Presumption Of Legitimacy
- § 46.7.3—Definitions In Wills Or Trusts

#### § 46.8 SPOUSAL RIGHTS

- § 46.8.1—Intestate Protection Of Spouse
- § 46.8.2—Right Of Administration
- § 46.8.3—Spousal Allowances And Family Allowances
- § 46.8.4—Homestead Exemption
- § 46.8.5—Dower And Curtesy Abolished
- § 46.8.6—Omitted Spouse
- § 46.8.7—Putative Spouse
- § 46.8.8—Elective Share Of Surviving Spouse
- § 46.8.9—Rights Of Estranged Spouse
- § 46.8.10—Rights Of Subsequent Spouse
- § 46.8.11—Marital Agreements
- § 46.8.12—Life Insurance Proceeds

#### Chapter 47 BASICS OF OIL AND GAS

#### § 47.1 INTRODUCTION

#### § 47.2 TERMS AND TYPES OF INTERESTS IN OIL AND GAS

#### § 47.3 HISTORY OF OIL AND GAS LAW

- § 47.3.1—Ad Coelum Doctrine
- § 47.3.2—Rule Of Capture Doctrine
- § 47.3.3—Correlative Rights
- § 47.3.4—Economic And Physical Waste
- § 47.3.5—Limitation Of The Rule Of Capture Through Oil And Gas Conservation Laws

### § 47.4 CLASSIFICATION OF MINERAL, ROYALTY, AND LEASEHOLD INTERESTS

- § 47.4.1—Classification As Real Or Personal Property
- § 47.4.2—Classification As Corporeal Or Incorporeal
- § 47.4.3—Consequences Of Classification

TOC-60 (11/16)

	§ 47.5	CONVEYANCE OF MINERAL, ROYALTY, AND LEASEHOLD INTERESTS			
		§ 47.5.1—Impact Of A Conveyance Or Reservation Of "Minerals"			
		§ 47.5.2—Mineral/Royalty Distinction			
		§ 47.5.3—Fractional Interest Conveyances			
		§ 47.5.4—Term Mineral Estates And Related Issues			
	§ 47.6	PROBATE ISSUES IMPACTING OIL AND GAS INTERESTS			
		§ 47.6.1—Colorado Probate Code			
		§ 47.6.2—Statute Of Limitations			
		§ 47.6.3—Methods For Establishing Marketable Title			
		§ 47.6.4—Ancillary Probate			
		§ 47.6.5—Determination Of Heirship Proceeding			
		§ 47.6.6—Additional Issues Impacting Probate Of Oil And Gas Interests			
	§ <b>47.</b> 7	TAXES			
	§ 47.8	UNKNOWN/UNCLAIMED MINERAL INTERESTS			
		§ 47.8.1—Abandonment			
		§ 47.8.2—Adverse Possession			
		§ 47.8.3—Receivers Or Trustees To Lease			
		§ 47.8.4—Escheat Statutes/Unclaimed Property			
		§ 47.8.5—Marketable Title Statutes			
		§ 47.8.6—Dormant Mineral Statutes			
	§ 47.9	CONCLUSION			
Chapter 48	WILL CONTESTS				
	<b>§ 48.1</b>	INTRODUCTION			
	8 40.1	INTRODUCTION			
	§ 48.2	COMMENCEMENT OF A CONTEST			
	Ū				
	§ 48.2	COMMENCEMENT OF A CONTEST			
	§ 48.2 § 48.3	COMMENCEMENT OF A CONTEST STATUTE OF LIMITATIONS TO CONTEST WILLS			
	§ 48.2 § 48.3 § 48.4	COMMENCEMENT OF A CONTEST  STATUTE OF LIMITATIONS TO CONTEST WILLS  INFORMAL/FORMAL PROBATE			

NO CONTEST — PENALTY CLAUSES IN WILLS

§ 48.8

§ 48.9	CHALLENGES TO EXECUTION					
§ 48.10	BURDENS OF PROOF — CONTESTED CASES					
§ 48.11	TESTAMENTARY CAPACITY					
§ 48.12	UNDUE INFLUENCE					
§ 48.13	REFORMATION OF WILLS					
§ 48.14	CONFIDENTIAL OR FIDUCIARY RELATIONSHIP					
§ 48.15	EVIDENCE					
	§ 48.15.1—State Of Mind Exception To Hearsay Rule § 48.15.2—Dead Man's Statute					
§ 48.16	DISCOVERY IN WILL CONTEST LITIGATION					
	§ 48.16.1—Testamentary Exception To Attorney-Client Privilege And Work Product					
	§ 48.16.2—Testamentary Exception To The Doctor-Patient Privilege					
§ 48.17	PRESUMPTIONS AND INFERENCES IN PROBATE LITIGATION AND WILL EXECUTIONS					
§ 48.18	TORTIOUS INTERFERENCE WITH INHERITANCE					
	<ul> <li>§ 48.18.1—Exhaustion Of Probate Remedy</li> <li>§ 48.18.2—Basic Elements</li> <li>§ 48.18.3—Punitive Damages And Attorney Fees</li> <li>§ 48.18.4—Time Limits For Filing Tortious Interference Claim</li> </ul>					
§ 48.19	CONSERVATOR-CREATED WILLS					
	<ul> <li>§ 48.19.1—Role Of Special Conservators</li> <li>§ 48.19.2—Procedural Issues</li> <li>§ 48.19.3—What Is The Special Conservator Asking The Court To Do?</li> <li>§ 48.19.4—Collateral Estoppel And <i>Res Judicata</i></li> <li>§ 48.19.5—Ante- And Post-Mortem Will Contests Involving Conservator-Created Wills</li> </ul>					

TOC-62 (11/16)

Chapter 49	CONTESTS AND DISPUTES IN ESTATE AND TRUST PROCEEDINGS			
	§ 49.1	INTRODUCTION		
	§ 49.2	STANDING/REAL PARTY IN INTEREST AND THE ABILITY TO FILE AN OBJECTION OR CLAIM		
	§ 49.3	DOCUMENTS PURPORTING TO BE WILLS AND WILL CONTRACTS		
		§ 49.3.1—Standard Formalities § 49.3.2—Holographic Wills § 49.3.3—Harmless Error Or Substantial Compliance Wills § 49.3.4—Lost Wills § 49.3.5—Will Contracts		
	§ 49.4	COMMON LAW MARRIAGE		
		§ 49.4.1—Mutual Consent Or Agreement To Be Spouses § 49.4.2—Mutual And Open Assumption Of The Marital Relationship § 49.4.3—Standard Of Proof		
	§ 49.5	DISPOSITION OF LAST REMAINS		
	§ 49.6	ATTORNEYS SERVING AS FIDUCIARIES		
	§ <b>49.</b> 7	THE FIDUCIARY CLIENT IN ESTATE AND TRUST ADMINISTRATION		
	§ 49.8	FIDUCIARY EXCEPTION TO ATTORNEY-CLIENT PRIVILEGE		
		§ 49.8.1—Delaware: Riggs National Bank Of Washington, D.C. v. Zimmer § 49.8.2—California And Texas: Wells Fargo Bank, N.A. v. Superior Court And Huie v. DeShazo § 49.8.3—United States v. Jicarilla Apache Nation		
		§ 49.8.4—Colorado's Stance Unsettled		
	<b>§ 49.9</b>	CLAIMS AGAINST ATTORNEYS BY NON-CLIENTS		

#### § 49.10 CLAIMS BY INTERESTED PERSONS AND REMEDIES § 49.10.1—Demand For Accounting § 49.10.2—Demand For Inventory § 49.10.3—Breach Of Fiduciary Duty § 49.10.4—Remedies § 49.10.5—Other Issues § 49.11 NO-CONTEST CLAUSES AND PROBABLE CAUSE § 49.12 RESOLUTION OF CONTESTS AND DISPUTES § 49.13 RELATED ISSUES ADDRESSED IN OTHER CHAPTERS § 49.14 **CONCLUSION** Chapter 50 INTENT AND REFORMATION: WILL FORM THWART SUBSTANCE? § 50.1 **INTRODUCTION** § 50.2 OVERVIEW — THE DEVELOPING PRINCIPLE § 50.2.1—The Courts Exalt Substance § 50.2.2—Sky Dancer: The First Test § 50.2.3—Wiltfong: The Analysis Refined § 50.2.4—The Principle Is Broadened § 50.3 FORM REINVOGORATED: ESTATE OF McCREATH § 50.3.1—Pertinent Factual History § 50.3.2—Litigation Ensues; The Court Rules § 50.3.3—The Appellate Analysis § 50.3.4—Observations And Questions § 50.4 **CONCLUSION: A TREND WAYLAID?** Chapter 51 **EQUITABLE REMEDIES** § 51.1 INTRODUCTION § 51.2 **ACCOUNTING**

TOC-64 (11/16)

#### § 51.3 RESULTING TRUSTS

- § 51.3.1—Generally
- § 51.3.2—Distinguished From Constructive Trusts
- § 51.3.3—When Imposed

#### § 51.4 CONSTRUCTIVE TRUSTS

- § 51.4.1—Generally
- § 51.4.2—The "Outer Limits" Of Constructive Trusts
- § 51.4.3—Requirements For Imposition Of Constructive Trust
- § 51.4.4—Possible Grounds Supporting Imposition Of Constructive Trust
- § 51.4.5—Statute Of Limitations

#### § 51.5 OTHER EQUITABLE REMEDIES

- § 51.5.1—Equitable Lien
- § 51.5.2—Implied Contract
- § 51.5.3—Promissory Estoppel
- § 51.5.4—Quantum Meruit And Unjust Enrichment
- § 51.5.5—Subrogation
- § 51.5.6—Restitution
- § 51.5.7—Specific Performance

#### § 51.6 FINAL CONSIDERATIONS

#### **SUBJECT INDEX**