

LIST OF CHAPTERS

Chapter 1	PROBATE JURISDICTION	1
Chapter 2	ORGANIZATION AND FUNCTIONING OF COURTS OF PROBATE — VENUE	23
Chapter 3	PROBATE OF WILLS AND STEPS TO SECURING LETTERS TESTAMENTARY	29
Chapter 4	WILL CONTESTS — REVOCATION	71
Chapter 5	DELAYED PROBATE OF WILL	105
Chapter 6	MISSING, LOST, OR DESTROYED WILLS	109
Chapter 7	CONTRACTS TO MAKE OR NOT TO MAKE WILLS	113
Chapter 8	EFFECT OF DETERMINATION OF TESTACY OR INTESTACY	121
Chapter 9	FOREIGN WILLS AND FOREIGN REPRESENTATIVES	127
Chapter 10	SECURING LETTERS IN INTESTATE PROCEEDINGS	137
Chapter 11	GROUND FOR REFUSAL TO APPOINT OR FOR REMOVAL	151
Chapter 12	DESCENT AND DISTRIBUTION — DETERMINATION OF HEIRSHIP	157
Chapter 13	ELECTIONS (INCLUDING SPOUSE’S AUGMENTED ESTATE ELECTION)	181
Chapter 14	PRETERMITTED CHILD — OMITTED SPOUSE	201
Chapter 15	ACTIONS BY AND AGAINST REPRESENTATIVES	207
Chapter 16	CLAIMS AGAINST ESTATE	229
Chapter 17	EXEMPT PROPERTY, FAMILY ALLOWANCES, AND HOMESTEAD EXEMPTION	271

Chapter 18	INVENTORY, DISCOVERY, AND APPRAISAL OF ASSETS	281
Chapter 19	NON-PROBATE INTERESTS	301
Chapter 20	MANAGEMENT OF ASSETS	319
Chapter 21	POST-MORTEM ESTATE PLANNING	355
Chapter 22	INCOME TAX RETURNS FOR DECEDENT AND ESTATE	383
Chapter 23	FEES OF FIDUCIARIES AND ATTORNEYS	387
Chapter 24	FEDERAL ESTATE TAX	401
Chapter 25	COLORADO ESTATE TAX	403
Chapter 26	INCOME TAXATION OF TRUSTS AND TRUST BENEFICIARIES	417
Chapter 27	SALE AND MORTGAGE OF PROPERTY	429
Chapter 28	INTERMEDIATE REPORT	441
Chapter 29	TYPES OF DEVISES	443
Chapter 30	LAPSED, VOID, ADEEMED, AND ABATED DEVISES	449
Chapter 31	PARTIAL DISTRIBUTIONS	459
Chapter 32	WILL AND TRUST CONSTRUCTION	467
Chapter 33	NOTICE DURING ADMINISTRATION	507
Chapter 34	PREPARATION FOR FINAL SETTLEMENT OF DECEDENT'S ESTATE ACCOUNTING ISSUES	517
Chapter 35	FINAL SETTLEMENT AND SUBSEQUENT PROCEDURE	559
Chapter 36	FINALITY OF FINAL SETTLEMENT	571
Chapter 37	REOPENING ESTATE	575
Chapter 38	TRANSFERS OF PROPERTY	577

List of Chapters

Chapter 39	SUCCESSOR REPRESENTATIVES — PROCEDURE AND LIABILITIES	585
Chapter 40	FIDUCIARY AND ATTORNEY MISCONDUCT	589
Chapter 41	PUBLIC ADMINISTRATORS	617
Chapter 42	WITNESSES IN PROBATE MATTERS	621
Chapter 43	AVOIDANCE OF ADMINISTRATION — SMALL ESTATES ACT	649
Chapter 44	GUARDIANS AND CONSERVATORS	657
Chapter 45	ABSENTEES	709
Chapter 46	TRUSTS	711
	TABLE OF AUTHORITIES	739
	SUBJECT INDEX	795

TABLE OF CONTENTS

Chapter 1	PROBATE JURISDICTION	1
§ 1.1	WHAT IS PROBATE?	1
§ 1.2	HOW JURISDICTION ATTACHES	2
§ 1.3	NEED FOR PROBATE	3
§ 1.4	HISTORICAL BACKGROUND OF PROBATE JURISDICTION	4
§ 1.5	ACTIVITY OF COURT IN DECEDENTS' ESTATES	5
§ 1.6	BASIS OF JURISDICTION	8
§ 1.7	NOTICE	8
§ 1.8	COLORADO CONSTITUTIONAL PROVISIONS AND EFFECT	9
§ 1.9	PROBATE JURISDICTION AFTER 1965	10
§ 1.10	OTHER JURISDICTIONAL MATTERS	13
§ 1.11	OTHER DECISIONS ON JURISDICTION OVER PERSONAL PROPERTY	14
§ 1.12	MISCELLANEOUS MATTERS OF JURISDICTION	14
§ 1.13	FEDERAL COURT JURISDICTION	16
§ 1.14	DETERMINATION OF DEATH	18
	CHAPTER BIBLIOGRAPHY	18

Chapter 2	ORGANIZATION AND FUNCTIONING OF COURTS OF PROBATE — VENUE	23
------------------	--	----

§ 2.1	HOW COURTS OF PROBATE ARE CREATED	23
§ 2.2	CLERKS	24
§ 2.3	RECORDS	24
§ 2.4	PROCESS	24
§ 2.5	AFFIRMATION REGARDING CONTENTS OF PLEADINGS	25
§ 2.6	VENUE	25
§ 2.7	TERMS OF COURT FOR PROBATE	26
§ 2.8	DESTRUCTION OF PROBATE RECORDS	26
§ 2.9	PROBATE RULES	26
§ 2.10	FEES OF PROBATE COURTS	27
	CHAPTER BIBLIOGRAPHY	27

Chapter 3	PROBATE OF WILLS AND STEPS TO SECURING LETTERS TESTAMENTARY	29
------------------	--	----

§ 3.1	LOCATING WILL	31
§ 3.2	DUTY AND LIABILITY OF BOX LESSOR OR OTHER CUSTODIAN OF WILL	31
§ 3.3	JOINTLY HELD BOX	33
§ 3.4	PROPERTY IN BEARER FORM CLAIMED AS PROPERTY OF ANOTHER	33
§ 3.5	FURTHER SEARCH FOR WILL	33

Table of Contents

§ 3.6	DUTY OF NAMED PERSONAL REPRESENTATIVE REGARDING PROBATE	34
§ 3.7	RECOVERY OF EXPENSES	34
§ 3.8	ADMINISTRATION NOT JUSTIFIED	35
§ 3.9	WILL LODGED IN WRONG COUNTY	35
§ 3.10	IS THE WILL IN FORCE?	35
§ 3.11	FORMS OF PROBATE	35
§ 3.12	TYPES OF WILLS	36
§ 3.13	THE LIVING WILL	37
§ 3.14	INFORMAL PROBATE AND APPOINTMENT PROCEDURE	37
§ 3.15	FORMAL PROBATE AND APPOINTMENT PROCEDURE	41
§ 3.16	SERVICEMEMBERS CIVIL RELIEF ACT	46
§ 3.17	REQUISITES OF A WILL	47
§ 3.18	HEARING ON PROBATE WHERE UNCONTESTED ...	50
§ 3.19	WILLS EXECUTED OUTSIDE COLORADO IN CONFORMITY WITH FOREIGN LAW	50
§ 3.20	PRESUMPTIONS	51
§ 3.21	DOCUMENTS INCORPORATED BY REFERENCE	51
§ 3.22	FACTS OF INDEPENDENT SIGNIFICANCE	52
§ 3.23	FINAL PREPARATIONS FOR HEARING	53
§ 3.24	IRREGULARITIES IN PROCEEDINGS	54
§ 3.25	PROBATE OR DENIAL OF PROBATE	55

§ 3.26	RES JUDICATA	55
§ 3.27	WHO MAY MOVE TO VACATE ORDER OF PROBATE	56
§ 3.28	TYPE OF HEARING ON PROCEEDING TO VACATE PROBATE	56
§ 3.29	EFFECT ON LETTERS	56
§ 3.30	APPEAL AND ERROR	57
§ 3.31	TIME LIMIT FOR PROBATE	57
§ 3.32	RECOVERY FROM TAKER UNDER FORMER ADMINISTRATION	58
§ 3.33	OATH, BOND, AND LETTERS	58
§ 3.34	SPECIAL ADMINISTRATOR	59
§ 3.35	POWERS OF PERSONAL REPRESENTATIVE BEFORE APPOINTMENT	60
§ 3.36	PERSONAL REPRESENTATIVE OF PERSONAL REPRESENTATIVE	60
§ 3.37	POWERS AFTER APPOINTMENT	60
§ 3.38	EFFECT OF MULTIPLE PERSONAL REPRESENTATIVES	61
§ 3.39	LIABILITY OF PERSONAL REPRESENTATIVE	61
§ 3.40	PUBLICATION TO CREDITORS	61
§ 3.41	ALERTING REPRESENTATIVE TO RESPONSIBILITIES	62
§ 3.42	ALTERNATIVE PROCEDURES REGARDING PROBATE AND ADMINISTRATION	62
	CHAPTER BIBLIOGRAPHY	63

Table of Contents

Chapter 4	WILL CONTESTS — REVOCATION	71
§ 4.1	WAYS OF COMMENCING CONTEST	72
§ 4.2	PROCEDURE	73
§ 4.3	COSTS AND EXPENSES OF PROPONENT AND CONTESTANT	74
§ 4.4	THE OBJECTION	74
§ 4.5	INTEREST OF THE OBJECTOR — STANDING	75
§ 4.6	NO-CONTEST PROVISION	77
§ 4.7	ESTOPPEL TO CONTEST — NUPTIAL AGREEMENTS	77
§ 4.8	EFFECT OF ANTENUPTIAL OR POSTNUPTIAL AGREEMENTS	78
§ 4.9	CONTRACT TO MAKE A WILL	79
§ 4.10	QUESTIONS AS TO EXECUTION	79
§ 4.11	PRESUMPTIONS AND INFERENCES	82
§ 4.12	INVALIDITY OF PROVISIONS	83
§ 4.13	REVOCATION	83
§ 4.14	DUPLICATE WILLS	85
§ 4.15	DEPENDENT RELATIVE REVOCATION — REVIVAL	86
§ 4.16	PROBATE OF LOST WILL	87
§ 4.17	CHANGE OF VENUE	87
§ 4.18	EVIDENCE	87

§ 4.19	TESTAMENTARY CAPACITY	88
§ 4.20	UNDUE INFLUENCE AND FRAUD	90
§ 4.21	UNNATURALNESS OF PROVISIONS	91
§ 4.22	WEIGHT AND SUFFICIENCY OF EVIDENCE	91
§ 4.23	INSTRUCTIONS TO JURY	92
§ 4.24	DIRECTED VERDICT	92
§ 4.25	DECREE	93
§ 4.26	APPELLATE PROCEDURE	93
§ 4.27	TORTIOUS INTERFERENCE WITH INHERITANCE	94
	CHAPTER BIBLIOGRAPHY	94
	EXHIBIT	
	Exhibit 4A—List of Jury Instructions — Colorado Civil Jury Instructions	103
Chapter 5	DELAYED PROBATE OF WILL	105
§ 5.1	WHAT IS DELAYED PROBATE?	105
§ 5.2	PROCEDURE	105
§ 5.3	HEARING	106
§ 5.4	STATUTES OF LIMITATION ON PROBATE OF NEWLY DISCOVERED WILL	106
§ 5.5	WHERE PRESENTED	107
	CHAPTER BIBLIOGRAPHY	107

Table of Contents

Chapter 6	MISSING, LOST, OR DESTROYED WILLS	109
	§ 6.1 ORDER TO PRODUCE WILL	109
	§ 6.2 REQUIREMENTS FOR ADMISSION OF LOST WILL	109
	§ 6.3 CONTENTS	110
	§ 6.4 EXECUTION	110
	§ 6.5 ONLY PART OF WILL PROVED	111
	§ 6.6 LOST REVOKING INSTRUMENT	111
	§ 6.7 BURDEN OF PROOF	111
	§ 6.8 SETTING ASIDE DECREE	111
<hr/>		
Chapter 7	CONTRACTS TO MAKE OR NOT TO MAKE WILLS	113
	§ 7.1 GENERAL	113
	§ 7.2 EFFECT OF STATUTE OF FRAUDS ON EQUITABLE REMEDIES	114
	§ 7.3 CONSIDERATION	115
	§ 7.4 FORM	115
	§ 7.5 PROPER REMEDY FOR BREACH	116
	§ 7.6 PROCEDURE	116
	§ 7.7 CONTRACTS FOR RECIPROCAL OR MUTUAL WILLS	117
	§ 7.8 REMEDIES FOR BREACH OF CONTRACTS TO MAKE OR NOT TO REVOKE WILLS	117
	CHAPTER BIBLIOGRAPHY	118

Chapter 8	EFFECT OF DETERMINATION OF TESTACY OR INTESTACY	121
------------------	--	-----

§ 8.1	CONCLUSIVENESS	121
§ 8.2	CONSENT TO PROBATE	122
§ 8.3	FRAUD — <i>GLENN v. MITCHELL</i>	123

Chapter 9	FOREIGN WILLS AND FOREIGN REPRESENTATIVES	127
------------------	--	-----

§ 9.1	DEFINITION OF FOREIGN WILL	127
§ 9.2	HISTORICAL — FULL FAITH AND CREDIT	128
§ 9.3	WHAT LAW GOVERNS	128
§ 9.4	PROCEDURE	129
§ 9.5	LETTERS	131
§ 9.6	COURT DETERMINATION OF RIGHTS	133
§ 9.7	INSOLVENCY	133
§ 9.8	ACTIONS BY FOREIGN REPRESENTATIVES	133
§ 9.9	SURRENDERING PROPERTY TO FOREIGN REPRESENTATIVE	133
§ 9.10	UNIFORM INTERNATIONAL WILLS ACT	134

Chapter 10	SECURING LETTERS IN INTESTATE PROCEEDINGS	137
-------------------	--	-----

§ 10.1	FILING PETITION OR APPLICATION	138
§ 10.2	WHO IS ENTITLED TO LETTERS	139
§ 10.3	NOTICE	141
§ 10.4	QUALIFICATION, BOND, ETC.	142

Table of Contents

§ 10.5	LETTERS	143
§ 10.6	SPECIAL ADMINISTRATOR	143
§ 10.7	REVOCAION OF LETTERS	144
§ 10.8	POWERS OF INTESTATE PERSONAL REPRESENTATIVE	144
§ 10.9	JOINT CONTROL	145
§ 10.10	SUCCESSOR REPRESENTATIVE	145
§ 10.11	INTESTATE ADMINISTRATION	145
§ 10.12	NOTICE TO CREDITORS	146
§ 10.13	ALERTING REPRESENTATIVE TO RESPONSIBILITIES	146
§ 10.14	SUPERVISED ADMINISTRATION	146
	CHAPTER BIBLIOGRAPHY	148
<hr/>		
Chapter 11	GROUNDS FOR REFUSAL TO APPOINT OR FOR REMOVAL	151
<hr/>		
§ 11.1	WHO MAY OBJECT TO APPOINTMENT	151
§ 11.2	GROUNDS FOR REFUSING APPOINTMENT	151
§ 11.3	WHO MAY REQUEST REMOVAL	152
§ 11.4	GROUNDS FOR REMOVAL	152
§ 11.5	SUSPENSION — LIMITATION OF POWERS	153
§ 11.6	PROCEDURE	153
§ 11.7	BURDEN OF PROOF	153
§ 11.8	APPEALS	154

§ 11.9 SUCCESSOR REPRESENTATIVE 155

§ 11.10 EFFECT ON PRIOR ACTIONS 155

CHAPTER BIBLIOGRAPHY 155

**Chapter 12 DESCENT AND DISTRIBUTION —
DETERMINATION OF HEIRSHIP 157**

§ 12.1 GENERAL 158

§ 12.2 STATUTORY PATTERN IN INTESTACY 160

§ 12.3 BY REPRESENTATION (C.R.S. § 15-11-106) 164

§ 12.4 ADOPTED, NATURAL, AND GENETIC CHILDREN ... 164

§ 12.5 COMMON LAW MARRIAGE 168

§ 12.6 ALIENS (C.R.S. § 15-11-111) 168

§ 12.7 ADVANCEMENTS (C.R.S. § 15-11-109) 169

§ 12.8 SLAYER MAY NOT INHERIT (C.R.S. § 15-11-803) 169

§ 12.9 DETERMINATION OF HEIRSHIP DURING
ADMINISTRATION 170

§ 12.10 DETERMINATION OF HEIRSHIP AT FINAL
SETTLEMENT 171

§ 12.11 DETERMINATION OF HEIRSHIP OUTSIDE OF
ADMINISTRATION 172

§ 12.12 SIMULTANEOUS DEATH 172

§ 12.13 STATUTORY PROCEEDING EXCLUSIVE 173

§ 12.14 DECREE DETERMINES HEIRS, NOT TITLE 174

§ 12.15 120-HOUR SURVIVAL RULE 174

Table of Contents

§ 12.16	COLLATERAL ATTACK ON OTHER JUDGMENTS . . .	174
§ 12.17	COSTS	174
§ 12.18	EVIDENCE AND TRIAL	174
§ 12.19	EFFECT OF DECREE ON NON-PROBATE PROPERTY	175
§ 12.20	DUTY OF FIDUCIARY TO INVESTIGATE	176
	CHAPTER BIBLIOGRAPHY	176
<hr/>		
Chapter 13	ELECTIONS (INCLUDING SPOUSE'S AUGMENTED ESTATE ELECTION)	181
<hr/>		
§ 13.1	TYPES OF ELECTION	182
§ 13.2	SPOUSE'S ELECTION UNDER THE CODE	182
§ 13.3	INCOMPETENT SURVIVING SPOUSE	187
§ 13.4	FORM AND TIME OF ELECTION	188
§ 13.5	ON WHAT ELECTION OPERATES	189
§ 13.6	NON-ELECTION	189
§ 13.7	PRIVILEGE NOT PROPERTY RIGHT	190
§ 13.8	EFFECT OF ELECTION ON EXEMPT PROPERTY AND FAMILY ALLOWANCES	190
§ 13.9	EFFECT OF CONTRACT FOR MUTUAL WILLS	190
§ 13.10	DEFENSES AGAINST SPOUSE'S ELECTION — NUPTIAL CONTRACTS	190
§ 13.11	ELECTION FILED DESPITE AGREEMENT TO CONTRARY	193

§ 13.12	EFFECT OF CONTRACT TO WILL TO THIRD PARTY	193
§ 13.13	EFFECT OF ELECTION ON RIGHTS UNDER WILL	194
§ 13.14	DUTY OF COURT ON SETTLEMENT	195
§ 13.15	PROPERTY IN TWO JURISDICTIONS	195
§ 13.16	EQUITABLE ELECTION	195
§ 13.17	DISCLAIMER	196
§ 13.18	OMITTED SPOUSE	197
§ 13.19	PROBLEMS FOR COURT IN CONNECTION WITH ELECTIONS	197
	CHAPTER BIBLIOGRAPHY	198

Chapter 14	PRETERMITTED CHILD — OMITTED SPOUSE	201
§ 14.1	RIGHT TO DISINHERIT CHILD	201
§ 14.2	AFTER-BORN CHILD	202
§ 14.3	EFFECT OF STATUTE	202
§ 14.4	EFFECT OF PROBATE	203
§ 14.5	ADOPTED CHILDREN	203
§ 14.6	OMITTED SPOUSE	203
§ 14.7	NATURE OF RIGHTS	204

Table of Contents

Chapter 15	ACTIONS BY AND AGAINST REPRESENTATIVES	207
§ 15.1	SURVIVAL OF ACTIONS	208
§ 15.2	FRAUD CLAIMS — SURVIVAL	209
§ 15.3	WRONGFUL DEATH ACTIONS	209
§ 15.4	PROCEDURE TO ENFORCE RIGHT AGAINST ESTATE	211
§ 15.5	CONCURRENT OR CONFLICTING JURISDICTION	212
§ 15.6	ACTIONS REGARDING REAL ESTATE	213
§ 15.7	RIGHT TO CONTROL ACTION — STANDING TO SUE	214
§ 15.8	DECLARATORY JUDGMENTS	214
§ 15.9	REOPENING DISSOLUTION OF MARRIAGE PROCEEDINGS	215
§ 15.10	PLEADING — CAPACITY	215
§ 15.11	FORECLOSURE SUITS AGAINST ESTATE ASSETS (C.R.S. § 15-12-803)	216
§ 15.12	SUITS AGAINST REPRESENTATIVES ONLY AFTER APPOINTMENT	216
§ 15.13	GARNISHMENT AND EXECUTION (C.R.S. § 15-12-812)	216
§ 15.14	MISCELLANEOUS DECISIONS	217
§ 15.15	ACTIONS BETWEEN REPRESENTATIVES	218
§ 15.16	JOINT RIGHTS AND OBLIGATIONS	218
§ 15.17	LIMITATION OF ACTIONS (C.R.S. § 15-12-109)	219

§ 15.18	COUNTERCLAIM AGAINST CLAIMANT (C.R.S. § 15-12-811)	219
§ 15.19	REPRESENTATIVE MAY AWAIT NOTICE	220
§ 15.20	EFFECT OF DEATH OF PARTY	220
§ 15.21	PARTNERSHIP ACCOUNTING	221
§ 15.22	ASSESSMENT OF ATTORNEY FEES AS COSTS	221
§ 15.23	IMPOSITION OF CONSTRUCTIVE TRUST	222
§ 15.24	COMPROMISE OF CONTROVERSIES	222
§ 15.25	ALTERNATE THEORIES OF FIDUCIARY MISCONDUCT	222
	CHAPTER BIBLIOGRAPHY	223
<hr/>		
Chapter 16	CLAIMS AGAINST ESTATE	229
<hr/>		
§ 16.1	GENERAL	230
	§ 16.1.1—Scope, Summary, And Highlights	230
	§ 16.1.2—What Are And Are Not Claims	231
	§ 16.1.3—“Claims” For Specific Property	232
	§ 16.1.4—Secured Claims And Other Cases Where No Claim Is Required	233
§ 16.2	PROCEDURE	234
	§ 16.2.1—Form And Method Of Presentment	234
	§ 16.2.2—Necessity Of Presentment	235
	§ 16.2.3—Unmatured And Contingent Claims	237
	§ 16.2.4—Effect Of Presentment	239
	§ 16.2.5—Time Limits On Presentment	239
	§ 16.2.6—Withdrawal Of Claims	243
	§ 16.2.7—Relationship To Statutes Of Limitation	243
	§ 16.2.8—Response To Presentment	244
	§ 16.2.9—Actions To Enforce Claims	245

Table of Contents

§ 16.2.10—Confusion From Cases	247
§ 16.2.11—Counterclaims And Compromise (C.R.S. §§ 15-12-811 And -813)	249
§ 16.2.12—Costs	249
§ 16.2.13—Setting Aside Order Of Allowance	249
§ 16.2.14—Execution And Levy Prohibited (C.R.S. § 15-12-812)	250
§ 16.2.15—Appeals	250
§ 16.3 SUBSTANTIVE VALIDITY OF CLAIMS	250
§ 16.3.1—Classification Of Claims	250
§ 16.3.2—Insolvent Estates	252
§ 16.3.3—Trust Funds	252
§ 16.3.4—Administration Expenses	253
§ 16.3.5—Maintaining Decedent’s Home	256
§ 16.3.6—Expense Of Delivering Specific Devises	257
§ 16.3.7—Funeral Expenses	257
§ 16.3.8—Issues Regarding Dead Bodies	258
§ 16.3.9—Last Illness Expenses	260
§ 16.3.10—Exempt Property And Family Allowances	260
§ 16.3.11—Debts And Taxes Preferred Under State Law	260
§ 16.3.12—General Claims	261
§ 16.4 SPECIAL CASES	263
§ 16.4.1—Unperformed Contracts	263
§ 16.4.2—Encumbered Assets (C.R.S. § 15-12-814)	264
§ 16.4.3—Representative As Claimant (C.R.S. § 15-12-614)	264
§ 16.4.4—Expenses Prior To Letters	264
§ 16.4.5—Individual Liability Of Representative	265
§ 16.4.6—Helping Claimants Prepare Claims	265
§ 16.4.7—Claims Against Non-Probate Assets	266
§ 16.4.8—Medicaid Claims	266
§ 16.4.9—Creditors Of Beneficiaries	267
CHAPTER BIBLIOGRAPHY	267

Chapter 17	EXEMPT PROPERTY, FAMILY ALLOWANCES, AND HOMESTEAD EXEMPTION	271
§ 17.1	HISTORY	272
	§ 17.1.1—Cost-Of-Living Adjustment	273
§ 17.2	EXEMPT PROPERTY ALLOWANCE	273
§ 17.3	FAMILY ALLOWANCE	274
§ 17.4	MECHANICS FOR REQUEST OF PAYMENT OF ALLOWANCES	275
§ 17.5	DOMICILE	276
§ 17.6	ESTOPPEL TO CLAIM	276
§ 17.7	MUST BE SPOUSE	276
§ 17.8	REMARRIAGE	276
§ 17.9	APPRAISAL	277
§ 17.10	EFFECT OF PROBATE ON ALLOWANCE	277
§ 17.11	CONVEYANCE DURING LIFE	277
§ 17.12	INSUFFICIENT PERSONAL ESTATE	277
§ 17.13	HOMESTEAD EXEMPTION	278
	CHAPTER BIBLIOGRAPHY	279
Chapter 18	INVENTORY, DISCOVERY, AND APPRAISAL OF ASSETS	281
§ 18.1	IMPORTANCE OF INVENTORY	282
§ 18.2	CONTENTS OF INVENTORY	283
§ 18.3	CLASSIFICATION OF PROPERTY	283
§ 18.4	WHEN INVENTORY DUE	283

Table of Contents

§ 18.5	SUPPLEMENTAL AND AMENDED INVENTORIES . . .	284
§ 18.6	PROCEDURE FOR SUPPLEMENTAL AND AMENDED INVENTORIES	284
§ 18.7	DEATH TAX REQUIREMENTS	285
§ 18.8	WHAT ARE NOT ASSETS	285
§ 18.9	WHAT ARE ASSETS	289
§ 18.10	TRANSFERS IN FRAUD OF CREDITORS	290
§ 18.11	TRANSFERS AFFECTING THE SPOUSE’S RIGHTS . .	291
§ 18.12	TRANSFERS IN TRUST	291
§ 18.13	DUTY OF REPRESENTATIVE	291
§ 18.14	KNOWLEDGE OR POSSESSION	292
§ 18.15	VALUES	293
§ 18.16	NON-PROBATE PROPERTY IN GENERAL	294
§ 18.17	WHEN NO ASSETS ARE FOUND	294
§ 18.18	DISCOVERY PROCEEDINGS IN PROBATE COURT . .	294
§ 18.19	FULL JURISDICTION OF PROBATE COURT	295
§ 18.20	APPRAISALS	295
§ 18.21	EVIDENTIARY VALUE	295
	CHAPTER BIBLIOGRAPHY	295
<hr/>		
Chapter 19	NON-PROBATE INTERESTS	301
§ 19.1	GENERAL	302
§ 19.2	REPRESENTATIVES’ RIGHT TO CONTRIBUTION . . .	303

§ 19.3	LIFE INSURANCE	303
§ 19.4	JOINT TENANCY	304
§ 19.5	JOINT, P.O.D., AND TRUST ACCOUNTS	306
§ 19.6	ANNUITIES	308
§ 19.7	EMPLOYEE BENEFITS	308
§ 19.8	BENEFITS UNDER SELF-EMPLOYED INDIVIDUALS RETIREMENT ACT	309
§ 19.9	STOCK OPTIONS	309
§ 19.10	UNITED STATES SAVINGS BONDS	310
§ 19.11	<i>INTER VIVOS</i> TRUSTS AND OTHER TRANSFERS	310
§ 19.12	COMMUNITY PROPERTY	310
§ 19.13	PARTNERSHIP INTERESTS	311
§ 19.14	SOCIAL SECURITY	311
§ 19.15	VETERANS' DEATH BENEFIT	312
§ 19.16	U.P.C. II — RULES OF CONSTRUCTION	312
§ 19.17	POWERS OF APPOINTMENT	312
§ 19.18	DISCLAIMER OF NON-PROBATE INTEREST	314
§ 19.19	SLAYER STATUTE	314
§ 19.20	CLAIMS AGAINST NON-PROBATE ASSETS	315
§ 19.21	BENEFICIARY DEED	315
	CHAPTER BIBLIOGRAPHY	316

Table of Contents

Chapter 20	MANAGEMENT OF ASSETS	319
§ 20.1	STATUTORY POWERS AND DUTIES	321
§ 20.2	DISTINCTIONS BETWEEN DUTIES TOWARD REAL AND PERSONAL PROPERTY	321
§ 20.3	DUTY OF LOYALTY	322
§ 20.4	SELF-DEALING	323
§ 20.5	DELEGATION	325
§ 20.6	RECORDS AND INFORMATION	325
§ 20.7	CARE — PRUDENCE	326
§ 20.8	PROTECTING ESTATE	326
§ 20.9	SEGREGATION OF ASSETS	327
§ 20.10	BANK ACCOUNTS	327
§ 20.11	INCOME	327
§ 20.12	IMPARTIALITY	328
§ 20.13	CO-FIDUCIARIES	328
§ 20.14	ADVISORS	328
§ 20.15	DILIGENCE	329
§ 20.16	LIABILITY FOR LACK OF PRUDENCE	330
§ 20.17	ADVICE OF COUNSEL	334
§ 20.18	CONTINUING BUSINESS	335
§ 20.19	PARTNERSHIP INTERESTS	336
§ 20.20	COLLECTING AND PROTECTING ASSETS	337
§ 20.21	INSURANCE COVERAGE	337

§ 20.22	DECEDENT’S UNCOMPLETED SECURITY ORDERS	340
§ 20.23	NOTIFYING BANKS	340
§ 20.24	INVESTMENTS — PRUDENT INVESTMENT RULE . . .	340
§ 20.25	REGISTRATION OF TITLE TO PROPERTY	342
§ 20.26	RENT AND REPAIR OF REAL ESTATE	343
§ 20.27	LIENS AND TAXES	343
§ 20.28	CLAIMS AGAINST OTHERS	344
§ 20.29	CLAIMS AGAINST THE ESTATE	344
§ 20.30	COMMISSION OF TORTS	345
§ 20.31	CONTRACTS	345
§ 20.32	WASTE	346
§ 20.33	QUIETING TITLE	346
§ 20.34	PURCHASE CONTRACTS	346
§ 20.35	SPECIFIC PERFORMANCE OF SALE CONTRACTS	346
§ 20.36	JOINDER IN CERTAIN FEDERAL TAX RETURNS . . .	347
§ 20.37	BUYING AT EXECUTION SALE	347
§ 20.38	BORROWING AND PLEDGING	348
§ 20.39	COLORADO FIDUCIARIES’ POWERS ACT	348
§ 20.40	FIREARMS	350
§ 20.41	FIDUCIARY ACCESS TO DIGITAL ASSETS	350
	CHAPTER BIBLIOGRAPHY	351

Chapter 21	POST-MORTEM ESTATE PLANNING	355
§ 21.1	TIME REQUIREMENTS FOR TAXES	357
§ 21.1.1	Federal Estate Tax Return And Tax Due	357
§ 21.1.2	Federal And Colorado Income Taxes — Decedent’s Final Returns Due	358
§ 21.1.3	Federal And Colorado Income Taxes — Fiduciary Returns Due	358
§ 21.1.4	Federal And Colorado Income Taxes — Tax Return Preparers	358
§ 21.1.5	Federal And Colorado Income Taxes — Gift Tax Returns And Taxes Due	359
§ 21.2	ALTERING DECEDENT’S DISPOSITIVE PLAN	359
§ 21.2.1	Spousal Election	359
§ 21.2.2	Disclaimers	359
§ 21.2.3	Will Contest Or Family Settlement	359
§ 21.3	INCOME TAX PLANNING	360
§ 21.3.1	Colorado And Federal Requirements Similar	360
§ 21.3.2	Decedent’s Final Return — Joint Return	360
§ 21.3.3	Decedent’s Final Return — Estimated Tax Declarations And Payments	360
§ 21.3.4	Decedent’s Final Return — Medical Expenses	360
§ 21.3.5	Decedent’s Final Return — Series E Bonds	361
§ 21.3.6	Fiduciary Returns — Option To Select Taxable Year — Estates Versus Trusts	361
§ 21.3.7	Fiduciary Returns — Considerations In Selecting Taxable Year For An Estate	361
§ 21.3.8	Fiduciary Returns — Cash Or Accrual Basis	362
§ 21.3.9	Fiduciary Returns — Payment Of Estimated Taxes	362
§ 21.3.10	Fiduciary Returns — Income In Respect Of A Decedent	362
§ 21.3.11	Fiduciary Returns — Timing Receipt Of Income	362
§ 21.3.12	Fiduciary Returns — Timing Payment Of Claims And Expenses	363
§ 21.3.13	Fiduciary Returns — Distributions To Estate Beneficiaries	363

§ 21.4	CLOSING THE ESTATE	365
	§ 21.4.1—Beneficiary Considerations	365
	§ 21.4.2—Tax Considerations	365
§ 21.5	CHARITABLE BENEFICIARIES	365
	§ 21.5.1—Considering Charitable Beneficiaries	365
§ 21.6	FEDERAL AND COLORADO ESTATE TAX PLANNING	366
	§ 21.6.1—Alternate Valuation Date — Tax Reduction	366
	§ 21.6.2—Alternate Valuation Date — Income Tax Basis	366
	§ 21.6.3—Deductions — Double Deductions	366
	§ 21.6.4—Deductions — Deduction Elections	366
	§ 21.6.5—Effect Of Spousal Election On Marital Deduction — In General	367
	§ 21.6.6—Effect Of Spousal Election On Marital Deduction — Property In Other Jurisdictions	367
	§ 21.6.7—Effect Of Spousal Election On Marital Deduction — Community Property	367
	§ 21.6.8—Selection Of Property To Satisfy Marital Deduction — Pecuniary Devise	367
	§ 21.6.9—Selection of Property To Satisfy Marital Deduction — Fractional Share Devise	368
	§ 21.6.10—Selection Of Property To Satisfy Marital Deduction — Valuation Clauses	368
	§ 21.6.11—Disclaimers — Beneficiary’s Estate Plan	368
	§ 21.6.12—Disclaimers — Charitable Successor	369
	§ 21.6.13—Disclaimers — Excess Marital Deduction	369
	§ 21.6.14—Disclaimers — Timing Of Disclaimer	369
	§ 21.6.15—Deferred Payment Of Tax — Reasonable Cause	369
	§ 21.6.16—Deferred Payment Of Tax — Closely Held Business	369
	§ 21.6.17—Deferred Payment Of Tax — Reversionary Or Remainder Interest	370
	§ 21.6.18—Deferred Payment Of Tax — I.R.C. § 303 Stock Redemptions	370
	§ 21.6.19—Deferred Payment Of Tax — Special Use Valuations	371

Table of Contents

§ 21.6.20—Deferred Payment Of Tax — Generation-Skipping Transfers	372
§ 21.6.21—Deferred Payment Of Tax — QTIP Elections	373
§ 21.7 PORTABILITY OF DECEASED SPOUSE’S UNIFIED CREDIT	374
§ 21.8 INTERPLAY OF INCOME TAX AND DEATH TAX	375
§ 21.8.1—Valuations And Alternate Valuation Date — In General	375
§ 21.8.2—Valuations And Alternate Valuation Date — Colorado Income Tax	376
§ 21.8.3—Administration Expenses — In General	376
§ 21.8.4—Administration Expenses — Unlimited Marital Deduction	376
§ 21.8.5—Administration Expenses — Charitable Deduction	377
§ 21.8.6—Administration Expenses — Income In Respect Of A Decedent	378
§ 21.8.7—Personal Representative Fees — General Considerations	378
§ 21.8.8—Personal Representative Fees — Renunciation Of Fee	378
§ 21.9 GENERAL CONSIDERATIONS	378
§ 21.9.1—Cash Needs	378
§ 21.9.2—Protecting The Fiduciary — Personal Liability For Taxes	378
§ 21.9.3—Protecting The Fiduciary — Statute Of Limitations	379
§ 21.9.4—Protecting The Fiduciary — Contributions To Tax	379
§ 21.9.5—Protecting The Fiduciary — Interest On General Pecuniary Devises	380
§ 21.10 FORMS	380
§ 21.10.1—Elimination Of Bixby-Warms Adjustments	380
CHAPTER BIBLIOGRAPHY	381

Chapter 22	INCOME TAX RETURNS FOR DECEDENT AND ESTATE	383
§ 22.1	SCOPE	383
§ 22.2	DECEDENT’S FINAL RETURN	384
§ 22.3	ESTATE’S RETURNS	384
§ 22.4	POST-DEATH TAX PLANNING	384
§ 22.5	COLORADO RETURNS	384
	CHAPTER BIBLIOGRAPHY	385

Chapter 23	FEES OF FIDUCIARIES AND ATTORNEYS	387
§ 23.1	INTRODUCTION — COMPENSATION AND COST RECOVERY	387
§ 23.2	ROUTINE ESTATE ADMINISTRATION (C.R.S. §§ 15-12-719 THROUGH -721, SUPERSEDED)	388
§ 23.3	LITIGATION (C.R.S. § 15-12-720, SUPERSEDED)	390
§ 23.4	THE QUESTION OF PERSONAL REPRESENTATIVE NEUTRALITY	391
§ 23.5	THE COMMON LAW BENEFIT RULE (C.R.S. § 15-12-720(3), SUPERSEDED)	393
§ 23.6	FEES TO LITIGATE FEES	394
§ 23.7	ASSESSMENT OF FEES AGAINST A THIRD PARTY	395
§ 23.8	FEES IN SURCHARGE ACTIONS	395
§ 23.9	FEES IN TRUST AND PROTECTIVE PROCEEDINGS	396
§ 23.10	EXPERT TESTIMONY	396

Table of Contents

§ 23.11	PROFESSIONAL RESPONSIBILITY CONTEXT	396
§ 23.12	TAX ASPECTS	397
§ 23.13	2011 COMPENSATION AND COST RECOVERY ACT	397
<hr/>		
Chapter 24	FEDERAL ESTATE TAX	401
<hr/>		
§ 24.1	SCOPE	401
§ 24.2	GENERAL	401
	CHAPTER BIBLIOGRAPHY	402
<hr/>		
Chapter 25	COLORADO ESTATE TAX	403
<hr/>		
§ 25.1	HISTORY OF THE TAX	404
§ 25.2	NATURE OF THE TAX	405
§ 25.3	PROPERTY SUBJECT TO THE TAX	405
§ 25.4	GENERATION-SKIPPING TRANSFERS	406
§ 25.5	FILING REQUIREMENTS	407
	§ 25.5.1—In General	407
	§ 25.5.2—Who Files	407
	§ 25.5.3—Date Due	407
	§ 25.5.4—Extensions	407
	§ 25.5.5—Attachments	407
	§ 25.5.6—Amended Return	408
§ 25.6	PAYMENT REQUIREMENTS	408
	§ 25.6.1—When Due	408
	§ 25.6.2—Interest	408
	§ 25.6.3—Penalty	408
	§ 25.6.4—Amended Return	408
	§ 25.6.5—Refund	409

§ 25.6.6—Burden Of Paying The Tax	409
§ 25.6.7—Liens, Releases, Certificates Of Payment, And Certificates Of Non-Liability	409
§ 25.6.8—Regulations	410
CHAPTER BIBLIOGRAPHY	410
EXHIBIT	
Exhibit 25A—Colorado Regulations, Estate Tax	411
<hr/>	
Chapter 26 INCOME TAXATION OF TRUSTS AND TRUST BENEFICIARIES	417
<hr/>	
§ 26.1 INTRODUCTION	418
§ 26.1.1—General Principles	418
§ 26.1.2—Filing Requirements	419
§ 26.1.3—Estimated Tax Payments	419
§ 26.1.4—Alternative Minimum Tax	419
§ 26.1.5—Tax Year	419
§ 26.1.6—Tax Rates	419
§ 26.1.7—Multiple Trusts	420
§ 26.1.8—Colorado Taxation Of Trusts	420
§ 26.2 CLASSIFICATION OF TRUSTS FOR INCOME TAX PURPOSES	420
§ 26.2.1—Simple Trusts	420
§ 26.2.2—Grantor Trusts	420
§ 26.2.3—Complex Trusts	420
§ 26.3 INCOME OF A TRUST	421
§ 26.3.1—Definition Of Trust Income	421
§ 26.3.2—Gross Income Of A Trust	421
§ 26.4 CAPITAL GAINS AND LOSSES	421
§ 26.4.1—Allocation Between Trust And Beneficiaries	421

Table of Contents

§ 26.5	DEDUCTIONS FROM GROSS INCOME OF A TRUST	421
	§ 26.5.1—Deduction In Lieu Of Personal Exemption	421
	§ 26.5.2—Deduction For Distributions	422
	§ 26.5.3—Charitable Deduction	422
	§ 26.5.4—Depreciation And Depletion	422
	§ 26.5.5—Miscellaneous Deductions	422
§ 26.6	DISTRIBUTABLE NET INCOME	423
	§ 26.6.1—Computation Of Distributable Net Income	423
	§ 26.6.2—Allocation Of Deductions That Enter Into Computation Of Distributable Net Income	423
§ 26.7	TAXATION OF TRUST BENEFICIARIES	424
	§ 26.7.1—Beneficiaries Of Simple Trusts	424
§ 26.8	BENEFICIARIES OF COMPLEX TRUSTS	424
	§ 26.8.1—Tier System Of Taxation Of Distributions	424
	§ 26.8.2—Separate Share Rule	424
	§ 26.8.3—65-Day Rule	424
	§ 26.8.4—“Kiddie Tax”	425
§ 26.9	DISTRIBUTIONS OF PROPERTY IN KIND	425
	§ 26.9.1—Recognition Of Gain Or Loss By Trust	425
	§ 26.9.2—Tax Consequences To Beneficiaries	425
§ 26.10	TERMINATION OF A TRUST	425
	§ 26.10.1—General Rules	425
	§ 26.10.2—Availability To Beneficiaries Of Loss Carryovers And Excess Deductions	426

Chapter 27	SALE AND MORTGAGE OF PROPERTY	429
	PREPARATORY NOTE	430
§ 27.1	TITLE TO AND POWER OVER PROPERTY — IN GENERAL	430
§ 27.2	TITLE TO AND POWER OVER REAL PROPERTY	431
§ 27.3	SALE OR MORTGAGE UNDER CODE	431
§ 27.4	PROCEDURE FOR ORDER OF SALE OR MORTGAGE	432
§ 27.5	IMPROPER SALE	433
§ 27.6	PUBLIC SALE	433
§ 27.7	APPRAISEMENT	433
§ 27.8	TERMS OF SALE	433
§ 27.9	SALE	434
§ 27.10	CONVEYANCE	435
§ 27.11	SURVIVOR OR SUCCESSOR EXECUTES DEED	435
§ 27.12	FRAUD	435
§ 27.13	LIMITATION ON FRAUD ACTION	435
§ 27.14	SALE DURING ADMINISTRATION	435
§ 27.15	WARRANTY OF TITLE	436
§ 27.16	REMEDIES OF PURCHASER AT VOID SALE	437
§ 27.17	SALE OR MORTGAGE OF PERSONAL PROPERTY	437

Table of Contents

§ 27.18	SALE OR MORTGAGE BY FOREIGN REPRESENTATIVE	437
§ 27.19	SPECIAL ADMINISTRATOR TO SELL	437
<hr/>		
Chapter 28	INTERMEDIATE REPORT	441
<hr/>		
§ 28.1	DUTY TO ACCOUNT	441
§ 28.2	OBJECTIONS TO INTERMEDIATE REPORT	442
<hr/>		
Chapter 29	TYPES OF DEVICES	443
<hr/>		
§ 29.1	SCOPE	443
§ 29.2	SPECIFIC DEVICES	443
§ 29.3	GENERAL DEVICES	445
§ 29.4	DEMONSTRATIVE DEVICES	445
§ 29.5	PECUNIARY DEVICES	446
§ 29.6	RESIDUARY DEVICES	446
§ 29.7	VARIATION OF RULES BY WILL	446
	CHAPTER BIBLIOGRAPHY	447
<hr/>		
Chapter 30	LAPSED, VOID, ADEEMED, AND ABATED DEVICES	449
<hr/>		
§ 30.1	DISTINCTIONS AND SCOPE	449
§ 30.2	LAPSED DEVICES (C.R.S. §§ 15-11-603 AND -706)	450
§ 30.3	VOID DEVICES	452
§ 30.4	ADEEMED DEVICES	452
§ 30.5	SATISFACTION (C.R.S. § 15-11-609)	452

§ 30.6	INTEREST IN SECURITIES — ACCESSIONS (C.R.S. § 15-11-605)	453
§ 30.7	DESTRUCTION, DISPOSITION, OR CHANGE IN CHARACTER (C.R.S. § 15-11-606)	453
§ 30.8	ABATEMENT (C.R.S. § 15-12-902)	454
§ 30.9	OFFSET (C.R.S. § 15-12-903)	455
§ 30.10	EXONERATION (C.R.S. § 15-11-607)	456
§ 30.11	DEVISE TO SATISFY DEBT	456
<hr/>		
Chapter 31	PARTIAL DISTRIBUTIONS	459
<hr/>		
§ 31.1	SCOPE	459
§ 31.2	GENERAL	459
§ 31.3	APPEAL BY PERSON AGGRIEVED	461
§ 31.4	RIGHT OF REPRESENTATIVE TO APPEAL	461
§ 31.5	HAZARDS IN PASSIVITY	463
§ 31.6	PROPER POLICY ON PARTIAL DISTRIBUTIONS	463
§ 31.7	MISCELLANEOUS MATTERS IN CONNECTION WITH EARLY AND PARTIAL DISTRIBUTIONS	463
<hr/>		
Chapter 32	WILL AND TRUST CONSTRUCTION	467
<hr/>		
§ 32.1	SCOPE	469
§ 32.2	GENERAL	469
§ 32.3	LAW GOVERNING	471
§ 32.4	CONSTRUE THE WILL AS A WHOLE	471
§ 32.5	DETERMINE INTENT FROM WORDS USED	472

Table of Contents

§ 32.6	TIME AT WHICH WILL SPEAKS	473
§ 32.7	GIVE EFFECT TO ALL WORDS	473
§ 32.8	INTESTACY AVOIDED	473
§ 32.9	PREFERENCE FOR BLOOD RELATIVES	473
§ 32.10	VESTED ESTATES VERSUS CONTINGENT — CONSTRUCTIONAL PREFERENCE	473
§ 32.11	HEIR INCLUDES SPOUSE	474
§ 32.12	RESTRAINT OF MARRIAGE AND OTHER RESTRAINTS	474
§ 32.13	CONDITIONS — FUTURE INTERESTS	475
§ 32.14	EXTRINSIC EVIDENCE — REFORMATION	475
§ 32.15	LAPSE — ANTI-LAPSE	477
§ 32.16	MEMBERS OF CLASS	478
§ 32.17	GIFT OF INCOME WITHOUT TERMINATION	483
§ 32.18	NATURE OF ESTATE GIVEN — TRUST INTERESTS IN DIVORCE CASES	483
§ 32.19	WHEN INCOME COMMENCES	488
§ 32.20	WHAT IS RESIDUE?	489
§ 32.21	JOINT TENANCY	489
§ 32.22	TWO WILLS — NEITHER REVOKED	489
§ 32.23	<i>EJUSDEM GENERIS</i>	490
§ 32.24	PRECATORY WORDS	490
§ 32.25	AND — OR	490
§ 32.26	SPOUSE BY NAME	490

§ 32.27	LIFE ESTATES	491
§ 32.28	TRUST FOR SUPPORT	491
§ 32.29	TRUSTEE’S POWER TO DETERMINE PRINCIPAL AND INCOME	491
§ 32.30	EQUITABLE CONVERSION	491
§ 32.31	PER CAPITA — BY REPRESENTATION	492
§ 32.32	PRESUMPTION OF KNOWLEDGE OF LAW	492
§ 32.33	CHARITIES	493
§ 32.34	RULE AGAINST PERPETUITIES	493
§ 32.35	PARTIES TO PROCEEDING	495
§ 32.36	<i>RES JUDICATA</i>	495
§ 32.37	RIGHT TO APPEAL	496
§ 32.38	ATTORNEY FEES	496
§ 32.39	SPENDTHRIFT PROVISIONS	496
§ 32.40	GIFT BY IMPLICATION	498
§ 32.41	EXERCISE OF POWER OF APPOINTMENT	498
§ 32.42	PERSONAL PROPERTY CASES	498
§ 32.43	SIMULTANEOUS DEATH	499
§ 32.44	SLAYER STATUTE	499
§ 32.45	EFFECT OF DISSOLUTION OF MARRIAGE	499
§ 32.46	LIMIT INTESTATE SUCCESSION	500
§ 32.47	STATUTORY EFFECTIVE DATE AND RETROACTIVITY	500
	CHAPTER BIBLIOGRAPHY	502

Table of Contents

Chapter 33	NOTICE DURING ADMINISTRATION	507
§ 33.1	SCOPE	507
§ 33.2	TO WHOM GIVEN	509
§ 33.3	VIRTUAL REPRESENTATION	511
§ 33.4	GENERAL OBSERVATIONS REGARDING NOTICE — INFORMATION OF APPOINTMENT	512
§ 33.5	U.S. SUPREME COURT DECISIONS	513
	CHAPTER BIBLIOGRAPHY	515

Chapter 34	PREPARATION FOR FINAL SETTLEMENT OF DECEDENT’S ESTATE ACCOUNTING ISSUES	517
§ 34.1	SCOPE	519
§ 34.2	GENERAL	519
§ 34.3	VARYING THE PATTERN OF DISTRIBUTION	521
§ 34.4	TAXES	522
§ 34.5	ADVANCEMENTS	522
§ 34.6	ADEMPMENT BY SATISFACTION	522
§ 34.7	DEVISEES INDEBTED	522
§ 34.8	OMITTED SPOUSE AND CHILDREN; GENETIC CHILDREN	523
§ 34.9	APPORTIONMENT OF LOSS BECAUSE OF ELECTION BY SPOUSE OR PRETERMISSION OR OMISSION OF SPOUSE	524
§ 34.10	CONSTRUCTION	526
§ 34.11	FEDERAL ESTATE TAX	526

§ 34.12	CONTRIBUTIONS TO ESTATE TAX BY THIRD PERSONS	527
§ 34.13	COLORADO INHERITANCE TAX	528
§ 34.14	PRINCIPAL AND INCOME ISSUES	529
§ 34.15	REVISED PRINCIPAL AND INCOME ACT	532
§ 34.16	TAX ELECTIONS AND TRUST ACCOUNTING — AMOUNT OF MARITAL DEDUCTION	538
§ 34.17	BIXBY-WARMS ADJUSTMENT	539
§ 34.18	FORM OF MARITAL DEDUCTION PROVISION	540
§ 34.19	ALLOCATIONS OF INCOME TAXES	540
§ 34.20	JURISDICTION FOR PRINCIPAL AND INCOME DETERMINATION	541
§ 34.21	REVIEW OF INCOME TAX RETURNS	542
§ 34.22	TITLE PROBLEMS	542
§ 34.23	EXONERATION AND MARSHALLING OF ASSETS ...	543
§ 34.24	CHANGES IN SUBJECT MATTER OF SPECIFIC DEVISES	543
§ 34.25	INCOME ON SPECIFIC GIFT	544
§ 34.26	CROPS — NATURAL RESOURCES — DEPLETABLE ASSETS	544
§ 34.27	MISCELLANEOUS DEATH TAX MATTERS	544
§ 34.28	MINOR, INCAPACITATED, OR DECEASED BENEFICIARIES	545
§ 34.29	ADVANCES OF EXPENSES AND ON ACCOUNT OF DISTRIBUTIVE SHARES	545
§ 34.30	REVIEW OF WILL	545

Table of Contents

§ 34.31	CASH FOR CLOSING	545
§ 34.32	TAX REFUNDS	546
§ 34.33	AFTER-DISCOVERED ASSETS	546
§ 34.34	FINAL INCOME TAXES	546
§ 34.35	FEES OF ATTORNEY	546
§ 34.36	FEES OF REPRESENTATIVES	548
§ 34.37	INDIVISIBLE OR WORTHLESS PROPERTY	548
§ 34.38	CREATION OF BUSINESS ENTITIES	549
§ 34.39	PLAN FOR DISTRIBUTION	549
§ 34.40	INDEMNITY FROM DISTRIBUTEES	551
§ 34.41	RESERVE	552
§ 34.42	INSOLVENT ESTATES	552
§ 34.43	INSURANCE POLICIES	552
§ 34.44	CHECK TICKLER FILE	553
§ 34.45	ESCHEAT	553
§ 34.46	CHECKING COURT RECORDS	553
§ 34.47	FIREARMS	554
	CHAPTER BIBLIOGRAPHY	554
<hr/>		
Chapter 35	FINAL SETTLEMENT AND SUBSEQUENT PROCEDURE	559
<hr/>		
§ 35.1	PRELIMINARY	560
§ 35.2	INFORMAL CLOSING	560
§ 35.3	FORMAL CLOSING	562

§ 35.4	ACCOUNTING DUTY	563
§ 35.5	NOTICE OF PROPOSED DISTRIBUTION	564
§ 35.6	NOTICE	565
§ 35.7	OBJECTIONS TO REPORT	565
§ 35.8	ESCHEAT	566
§ 35.9	FINAL INCOME TAX RETURNS	566
§ 35.10	ADVISING THE BENEFICIARIES OF INCOME TAX INFORMATION	567
§ 35.11	NOTIFY SURETIES	568
§ 35.12	INSURANCE POLICIES	568
§ 35.13	REAL ESTATE PAPERS TO DEVISEES	568
§ 35.14	DISPOSITION OF RECORDS	568
<hr/>		
Chapter 36	FINALITY OF FINAL SETTLEMENT	571
<hr/>		
§ 36.1	GENERAL RULE UNDER CODE	571
§ 36.2	REMEDIES DESPITE DECREE	571
§ 36.3	HOW TO GET A DISCHARGE THAT IS FINAL	572
	CHAPTER BIBLIOGRAPHY	573
<hr/>		
Chapter 37	REOPENING ESTATE	575
<hr/>		
§ 37.1	GENERAL	575
<hr/>		
Chapter 38	TRANSFERS OF PROPERTY	577
<hr/>		
§ 38.1	SCOPE	577
§ 38.2	REAL PROPERTY	577

Table of Contents

§ 38.3	PERSONAL PROPERTY	579
§ 38.4	SECURITY TRANSFERS	579
§ 38.5	MAILING	580
§ 38.6	TRANSFER TAXES ON SECURITIES	580
§ 38.7	TRANSFERS OF NEGOTIABLE INSTRUMENTS	581
§ 38.8	OTHER TRANSFERS	581
§ 38.9	REPRESENTATIVE'S DUTY TO TRANSFER ON DISTRIBUTION	582
	CHAPTER BIBLIOGRAPHY	582
<hr/>		
Chapter 39	SUCCESSOR REPRESENTATIVES — PROCEDURE AND LIABILITIES	585
<hr/>		
§ 39.1	SCOPE	585
§ 39.2	GENERAL	585
§ 39.3	DUTY OF RETIRING REPRESENTATIVE	586
§ 39.4	DUTY OF SUCCESSOR REPRESENTATIVE	587
<hr/>		
Chapter 40	FIDUCIARY AND ATTORNEY MISCONDUCT	589
<hr/>		
§ 40.1	SCOPE	590
§ 40.2	FIDUCIARY MISCONDUCT — IN GENERAL	590
§ 40.3	ACTIONS OBJECTING TO ACCOUNTING — FINAL SETTLEMENT	591
§ 40.4	FIDUCIARY LIABILITY TO NON-BENEFICIARY	592
§ 40.5	ACTION ON BOND	593

§ 40.6	RIGHTS AS BETWEEN PRINCIPAL AND SURETIES	594
§ 40.7	MEASURE OF DAMAGES INCLUDING COSTS	594
§ 40.8	JURY TRIAL	595
§ 40.9	OTHER REMEDIES	595
§ 40.10	DEFENSES — IN GENERAL	596
§ 40.11	DEFENSES — STATUTE OF LIMITATIONS	596
§ 40.12	DEBT OF REPRESENTATIVE	596
§ 40.13	LIABILITIES FOR ACTS OF AGENTS OR CO-FIDUCIARIES	597
§ 40.14	BURDEN OF PROOF IN CONTESTED ACCOUNTINGS	598
§ 40.15	INTERIM REMEDIES	598
§ 40.16	ATTORNEY MALPRACTICE	598
§ 40.17	ATTORNEY VIOLATIONS OF PROFESSIONAL RESPONSIBILITY RULES	602
	CHAPTER BIBLIOGRAPHY	612
<hr/>		
Chapter 41	PUBLIC ADMINISTRATORS	617
§ 41.1	APPOINTMENT AND QUALIFICATION	617
§ 41.2	DUTIES	617
§ 41.3	SUMMARY PROCEEDING	618
§ 41.4	APPOINTMENT IN PARTICULAR ESTATES — REMOVAL	618
	CHAPTER BIBLIOGRAPHY	619

Table of Contents

Chapter 42	WITNESSES IN PROBATE MATTERS	621
§ 42.1	SCOPE	622
§ 42.2	GENERAL	622
§ 42.3	PURPOSE OF DEAD MAN'S STATUTE	623
§ 42.4	SUMMARY OF COLORADO DEAD MAN'S STATUTE	623
§ 42.5	CONDITIONS FOR APPLICATION OF DEAD MAN'S STATUTE	624
§ 42.6	KINDS OF CASES IN WHICH DEAD MAN'S STATUTE IS APPLIED	624
§ 42.7	TESTS FOR APPLICATION OF STATUTE	625
§ 42.8	CASES IN WHICH PERSONS WERE DISQUALIFIED	625
§ 42.9	CASES IN WHICH PERSONS WERE NOT DISQUALIFIED	628
§ 42.10	PERSONS PROTECTED BY DEAD MAN'S STATUTE	630
§ 42.11	PERSONS NOT PROTECTED BY DEAD MAN'S STATUTE	631
§ 42.12	HARMLESS ERROR RULE	632
§ 42.13	DISQUALIFICATION OF NAMED EXECUTOR ON PROBATE	632
§ 42.14	SUBJECT MATTER OF TESTIMONY	634
§ 42.15	EXAMPLES OF EXCEPTIONS TO THE GENERAL RULE IN DEAD MAN'S STATUTE	635
§ 42.16	OBJECTIONS AND WAIVER	636

§ 42.17	CONVERSATIONS WITH DECEASED PARTNER	636
§ 42.18	CONSOLIDATION OF SUITS	636
§ 42.19	PRIVILEGED COMMUNICATIONS	637
§ 42.20	WAIVER	639
§ 42.21	2002 REPEAL AND RE-ENACTMENT OF DEAD MAN’S STATUTE	640
§ 42.22	WITNESSES INCOMPETENT BY REASON OF INFANCY	642
§ 42.23	WITNESSES INCOMPETENT BY REASON OF UNSOUND MIND	642
§ 42.24	HEARSAY RULE — COMMON EXCEPTIONS	642
§ 42.25	EXPERT TESTIMONY	643
	CHAPTER BIBLIOGRAPHY	643
<hr/>		
Chapter 43	AVOIDANCE OF ADMINISTRATION — SMALL ESTATES ACT	649
<hr/>		
§ 43.1	SCOPE	649
§ 43.2	ANTE-MORTEM DEVICES	649
§ 43.3	SUCCESSION WITHOUT ADMINISTRATION	650
§ 43.4	SMALL ESTATES ACT	651
§ 43.5	CONSTITUTIONALITY OF SMALL ESTATES ACT . . .	653
	CHAPTER BIBLIOGRAPHY	654

Chapter 44	GUARDIANS AND CONSERVATORS	657
<hr/>		
§ 44.1	INTRODUCTION	658
§ 44.1.1	—Scope	658
§ 44.1.2	—Revised Uniform Guardianship And Protective Proceedings Act	659
§ 44.1.3	—General	665
§ 44.1.4	—Powers Of Attorney	665
§ 44.1.5	—Criminal Background Check	671
§ 44.1.6	—Multistate Jurisdiction	671
§ 44.1.7	—Parental Delegation	672
§ 44.2	GUARDIANSHIP OF MINORS	672
§ 44.2.1	—Kinds Of Guardians	672
§ 44.2.2	—Procedure For Appointment Of Guardian	672
§ 44.2.3	—Representative Of Minor Or Incompetent In Suing Or Defending	674
§ 44.2.4	—Support Of Minor	674
§ 44.2.5	—Transfers To Minors Act	676
§ 44.3	GUARDIANSHIP OF INCAPACITATED PERSONS	676
§ 44.3.1	—Appointment And Termination Of Guardian For Incapacitated Person	676
§ 44.3.2	—Duties To Incapacitated Person Personally	681
§ 44.3.3	—Duty Of Incapacitated Person’s Guardian	681
§ 44.3.4	—Power To Change Domicile	681
§ 44.3.5	—Marriage, Annulment, And Divorce	682
§ 44.3.6	—Developmentally Disabled Person	682
§ 44.3.7	—Mentally Ill Person	682
§ 44.4	CONSERVATORSHIP	683
§ 44.4.1	—Appointment And Duties Of Conservator	683
§ 44.4.2	—Voluntary Conservatorship	689
§ 44.4.3	—Liability For Costs At Colorado State Institutions	689
§ 44.4.4	—Conservators For Non-Residents	690
§ 44.4.5	—Acceptance Of Appointment	690
§ 44.4.6	—Activities Of Conservator After Appointment Regarding Estate	690

	§ 44.4.7—Accounting	691
	§ 44.4.8—Filing Claims Against Estates Of Protected Persons	691
	§ 44.4.9—Use Of Property Including For Third Persons	692
	§ 44.4.10—Estate Planning — Disturbance Of Pre-Mortem Plans	694
	§ 44.4.11—Termination Of Proceedings	695
	§ 44.4.12—Death Of Protected Person	696
	§ 44.4.13—Final Settlement	696
	§ 44.4.14—Uniform Veterans’ Guardianship Act	696
§ 44.5	MISCELLANEOUS	698
	§ 44.5.1—Compensation Of Guardians, Conservators, And Others	698
	§ 44.5.2—Consolidated Proceedings	700
	§ 44.5.3—Testimony By Mentally Ill Persons And Infants	700
	§ 44.5.4— <i>Pro Se</i> Guardian Or Conservator	700
	§ 44.5.5—Ethics Opinion 126	701
	CHAPTER BIBLIOGRAPHY	701
<hr/>		
Chapter 45	ABSENTEES	709
	§ 45.1 GENERAL	709
	§ 45.2 CONSTITUTIONALITY	710
<hr/>		
Chapter 46	TRUSTS	711
	§ 46.1 GENERAL	712
	§ 46.2 DUTY TO REGISTER AND ADMINISTER — LIABILITIES	713
	§ 46.3 POWERS AND DUTIES	718
	§ 46.4 TRUSTEE’S BREACH OF TRUST	719
	§ 46.5 INCOME TAXES	719

Table of Contents

§ 46.6	POWERS OF APPOINTMENT — DEATH OF A BENEFICIARY	719
§ 46.7	CONSTRUCTION OF TRUSTS	720
§ 46.8	FEES	720
§ 46.9	VACANCY IN OFFICE — REMOVAL	721
§ 46.10	CHARITABLE TRUSTS	721
§ 46.11	TERMINATION, MODIFICATION, AND DEVIATION	722
§ 46.12	TRUST DECANTING	724
§ 46.13	REFORMATION	726
§ 46.14	REVOCATION	726
§ 46.15	FINAL SETTLEMENT	727
§ 46.16	ABUSE OF TRUSTEE DISCRETION	728
§ 46.17	TITLE TO TRUST PROPERTY	728
§ 46.18	NATURE OF BENEFICIAL INTERESTS	729
§ 46.19	TRUSTS FOR PETS	730
§ 46.20	SPENDTHRIFT TRUSTS	730
§ 46.21	STATUTORY TRUSTS	730
§ 46.22	RESULTING TRUSTS	730
§ 46.23	BUSINESS TRUSTS	731
§ 46.24	IRREVOCABLE LIFE INSURANCE TRUSTS	731
§ 46.25	SHAM TRUSTS	732

§ 46.26 JURISDICTION	733
CHAPTER BIBLIOGRAPHY	734
<hr/>	
TABLE OF AUTHORITIES	739
<hr/>	
SUBJECT INDEX	795
<hr/>	