

Contents

PART I ESTATE PLANNING: A PRACTICE-ORIENTED APPROACH

CHAPTER 1 HOW TO USE THIS BOOK	1-1
1.1 Locating the Proper Form and Use of Accompanying Materials	1-1
1.2 The Three Major Will and Trust Forms Headings	1-1
1.3 Wills as Primary Testamentary Instruments—Five Categories	1-2
1.4 Revocable (Living) Trusts and Pour-Over Wills (Part VII)—Five Categories	1-3
1.5 Irrevocable Trusts (Part VIII)—Five Categories	1-3
1.6 Alternative Forms and Clauses	1-4
1.7 Summary	1-4
CHAPTER 2 ESTATE PLANNING: ESSENTIAL OBJECTIVES	2-1
2.1 The Essential Estate Planning Objectives: Disposition of Assets and Tax Avoidance	2-1
2.1.1 Dispositive Estate Planning	2-1
2.1.2 Estate Tax Planning	2-2
2.2 Initiating the Estate Planning Process: Strategies and Recommendations ..	2-2
2.2.1 Coordinating the Different Segments	2-2
2.2.2 Initial Client Contact: Objectives	2-2
Form 2-1: Letter to Client Following Initial Client Contact to Accompany Estate Planning Questionnaire	2-3
Form 2-2: Estate Planning Questionnaire	2-4
2.2.3 Effective Gathering of Client Information: The Client Estate Planning Questionnaire	2-10
2.2.3.1 <i>Family Information</i>	2-10
2.2.3.2 <i>Assets and Liabilities</i>	2-11
2.2.4 Initial Client Meeting	2-11
2.2.4.1 <i>Information Gathering</i>	2-11
2.2.4.2 <i>Dispositive Goals</i>	2-12
2.2.4.3 <i>Selection of Fiduciaries and Guardians</i>	2-12
2.2.4.4 <i>Wills vs. Probate Substitutes</i>	2-12
2.2.5 Communications with the Client—Circular 230	2-12
Form 2-3: Memorandum to Client Re: Advantages and Disadvantages of Revocable Trusts vis-à-vis Wills in New York	2-13
2.3 Nature and Scope of the Estate Planning Engagement and Attorney’s Fee	2-15
2.3.1 Discussing the Engagement and Fee	2-15
Form 2-4: Engagement/Fee Letter with Dual Representation Provisions	2-15
2.3.2 Establishing the Fee	2-18
2.3.3 Ethical Issues in Representing Both Husband and Wife	2-19

CONTENTS

**PART II SIMPLE WILLS: FOR MARRIED COUPLES WITH COMBINED
ESTATE NOT SUBJECT TO ESTATE TAXATION**

**CHAPTER 3 SIMPLE WILLS FOR MARRIED COUPLES WITH ADULT
CHILDREN 3-1**

3.1 Overview 3-1

 3.1.1 Overall Summary of Dispositive Provisions for Wills in
 Category 3-1

3.2 Simple Wills—Outright to Spouse 3-2

 3.2.1 Summary of Dispositive Provisions 3-2

 3.2.2 When to Use These Wills 3-2

 3.2.3 Estate Tax Consequences 3-3

 3.2.4 Form for Simple Wills 3-3

 Form SW-1: Husband with Adult Children: Outright
 Gift of Residuary Estate to Spouse, if
 Surviving; if Not, Outright to Adult
 Children 3-3

 3.2.5 Key Action Subjects for Strategic Planning 3-7

3.3 Simple/Trust Wills—To Spouse in Trust Without Tax Planning 3-8

 3.3.1 Overall Summary of Dispositive Provisions 3-8

 3.3.2 Terms of Marital Trusts—How They Work 3-9

 3.3.3 When to Use These Wills 3-10

 3.3.4 Comparison of Marital/QTIP vs. Marital/Power of
 Appointment (POA) Trust 3-10

 3.3.4.1 *Marital/QTIP Trust* 3-10

 3.3.4.2 *Marital/POA Trust* 3-11

 3.3.5 Estate Tax Consequences 3-11

 3.3.6 Forms for “Simple/Trust” Wills 3-11

 Form SW-2/3: Simple Will with Marital Trust: Gift of
 Residuary Estate to Marital (QTIP or Power
 of Appointment) Trust for Benefit of Spouse
 for Life, Remainder to Adult Children; if
 Spouse Does Not Survive, Outright to Adult
 Children 3-12

 3.3.7 Key Action Subjects for Strategic Planning 3-19

3.4 Will Disposing Property Outright to Children
(No Provision for Spouse) 3-20

 3.4.1 Summary of Dispositive Provisions 3-20

 3.4.2 When to Use These Wills 3-20

 3.4.3 Estate Tax Consequences 3-21

 3.4.4 Caution: Spouse’s Right of Election in New York 3-21

 3.4.5 Will Forms for Outright Disposition of Children 3-21

 Form SW-4: Male Testator with Adult Children Whose
 Spouse Has Either Predeceased Him or Is
 Not to Be Left Anything under Will:
 Outright Gift of Residuary Estate to Adult
 Children 3-21

 3.4.6 Key Action Subjects for Strategic Planning 3-26

CHAPTER 4	SIMPLE WILLS FOR MARRIED COUPLES WITH MINOR CHILDREN	4-1
4.1	Overview	4-1
4.1.1	Overall Summary of Dispositive Provisions for Wills in Category	4-1
4.2	Simple Wills—To Spouse Outright, with Contingent Trusts for Children	4-2
4.2.1	Summary of Dispositive Provisions	4-3
4.2.2	Distribution of Separate Children’s Trusts	4-3
4.2.3	Distribution of Pot Trust for Children	4-3
4.2.4	When to Use These Wills	4-4
4.2.5	Estate Tax Consequences	4-4
4.2.6	Forms for “Simple” Wills with Contingent Trusts for Children	4-5
	Form SW-5/6: Simple Will—Married Testator with Minor Children: Outright Gift of Residuary Estate to Spouse, if Surviving; if Not, to Children in Trust (with Alternate Dispositive Provisions for Trusts)	4-5
4.2.7	Key Action Subjects for Strategic Planning	4-13
4.3	Simple/Trust Wills—To Spouse in Trust with Contingent Trusts for Children	4-14
4.3.1	Summary of Dispositive Provisions	4-14
4.3.2	Dispositive Terms of Marital Trusts	4-15
4.3.3	Distribution Alternatives for Children’s Trusts	4-16
4.3.4	When to Use These Wills	4-16
4.3.5	Comparison of Marital/QTIP vs. Marital/POA Trust	4-16
4.3.6	Estate Tax Consequences	4-16
4.3.7	Forms for Trust Wills with Children’s Trusts	4-17
	Form SW-7–10: Husband with Minor Children: Gift of Residuary Estate to Marital (Alternative Clauses for QTIP and Power of Appointment) Trust for Benefit of Spouse for Life, Remainder to Trust for Children (Alternative Clauses for Separate Trusts and Pot Trust); if Spouse Does Not Survive, to Trust for Children (Alternative Clauses for Separate Trusts and Pot Trust)	4-18
4.3.8	Key Action Subjects for Strategic Planning	4-28
4.4	Wills Disposing Property Outright to Trust for Minor Children (No Provision for Spouse)	4-29
4.4.1	Summary of Dispositive Provisions	4-29
4.4.2	When to Use These Wills	4-29
4.4.3	Estate Tax Consequences	4-30
4.4.4	Caution: Spouse’s Right of Election in New York	4-30
4.4.5	Forms for Wills Disposing of Property to Trust for Minor Children	4-30
	Form SW-11–12: Testator with Minor Children Whose Spouse Has Predeceased Him, or Is to Be Given No	

CONTENTS

	Interest under Will: Gift of Residuary Estate to Trust for Children (Alternate Clauses for Separate Trusts and Pot Trust)	4-30
4.4.6	Key Action Subjects for Strategic Planning	4-38
 PART III TAX PLANNING WILLS WITH CREDIT SHELTER/BYPASS TRUSTS IN COMBINATION WITH MARITAL BEQUEST (OUTRIGHT OR QTIP TRUST): FOR MARRIED COUPLES WITH COMBINED ESTATES EXCEEDING FEDERAL ESTATE TAX EXEMPTION (APPLICABLE EXCLUSION AMOUNT)		
 CHAPTER 5 STRATEGIC PLANNING WITH CREDIT SHELTER/BYPASS TRUSTS 5-1		
5.1	Effective Utilization of Federal Estate Tax Exemption Through Trusts . . .	5-1
5.2	Example: The Simple Will Pitfall and the Credit Shelter/Bypass Trust Solution.	5-2
5.3	Workings of the Bypass Trust	5-3
5.4	Alternatives for Structuring Bypass Trust	5-4
5.5	The “A-B” Will System and Formula Clauses	5-5
 CHAPTER 6 TAX PLANNING WILLS WITH CREDIT SHELTER/BYPASS TRUSTS IN COMBINATION WITH OUTRIGHT MARITAL BEQUEST — FOR MARRIED COUPLES WITH COMBINED ESTATES EXCEEDING LIFETIME EXEMPTION 6-1		
6.1	Wills with Bypass Trust and Outright Marital Bequest—For Married Couples with Adult Children.	6-1
6.1.1	General Description of Wills.	6-1
6.1.2	Summary of Dispositive Provisions	6-2
6.1.3	Graphic Summary of Dispositive Provisions of Credit Shelter/Bypass Trust and Estate Tax Effects.	6-2
6.1.4	When to Use These Wills	6-4
6.1.5	Estate Tax Consequences	6-4
6.1.6	Will Forms with Bypass Trust and Outright Marital Form TP-1-3: Testator with Adult Children: Outright (Pecuniary) Marital Deduction Bequest to Spouse of Amount in Excess of Unified Credit Equivalent; Residuary Estate to Credit Shelter/Bypass Trust: During Lifetime of Surviving Spouse — Three Alternative Dispositive Methods of Distribution from Trust, Remainder Outright to Living Descendants, <i>per Stirpes</i> ; if Spouse Disclaims Marital Bequest, to Bypass Trust; if Spouse Does Not Survive, Residuary Estate Outright to Living Descendants, <i>per Stirpes</i>	6-5
6.1.7	Client Presentation Charts for TP-1, TP-2, and TP-3	6-13
6.1.8	Key Action Subjects for Strategic Planning	6-14

6.2	Wills with Bypass Trust and Outright Marital Bequest for Married Couples with Minor Children	6-15
6.2.1	General Description of Wills	6-15
6.2.2	Overall Summary of Dispositive Provisions	6-15
6.2.3	Graphic Summary of Dispositive Provisions of Credit Shelter/Bypass Trust and Estate Tax Effects	6-16
6.2.4	When to Use These Wills	6-19
6.2.5	Estate Tax Consequences	6-19
6.2.6	Forms for Bypass Trust and Outright Marital—with Trusts for Children	6-20
	Form TP-4-9: Testator with Minor Children: Outright (Pecuniary) Marital Deduction Bequest to Spouse of Amount in Excess of Unified Credit Equivalent; Residuary Estate to Credit Shelter/Bypass Trust (with Three Alternative Methods for Distribution from Trust), Remainder to Living Descendants, <i>per Stirpes</i> (with Alternatives of Separate Trusts or Pot Trust); if Spouse Disclaims Marital Bequest, to Bypass Trust; if Spouse Does Not Survive, Residuary Estate to Living Descendants, <i>per Stirpes</i> (with Alternatives for Separate Trusts or Pot Trust)	6-21
6.2.7	Client Presentation Charts for TP-4, TP-5, TP-6, TP-7, TP-8, and TP-9	6-31
6.2.8	Key Action Subjects for Strategic Planning	6-38
CHAPTER 7	STRATEGIC TAX PLANNING WITH MARITAL/QTIP TRUSTS (“A” SHARE) IN COMBINATION WITH BYPASS TRUST (“B” SHARE): THE “A-B” TRUST STRUCTURE	7-1
7.1	Description of the “A-B” Trust Structure	7-1
7.2	The Marital Trust in General	7-1
7.3	The Unlimited Marital Deduction and Strategic Planning with QTIP Trusts	7-1
7.4	Federal Tax Requirements of QTIP Trust	7-3
CHAPTER 8	TAX PLANNING WILLS WITH QTIP AND BYPASS TRUSTS: FOR MARRIED COUPLES WITH COMBINED ESTATES EXCEEDING LIFETIME EXEMPTION (PECUNIARY FORMULA)	8-1
8.1	Wills with QTIP and Bypass Trusts—For Married Couples with Adult Children	8-1
8.1.1	General Description of Wills	8-1
8.1.2	Summary of Dispositive Provisions	8-1
8.1.3	Summary of Dispositive Provisions and Estate Tax Effects of Marital and Credit Shelter/Bypass Trusts	8-2
8.1.4	When to Use These Wills	8-2

CONTENTS

8.1.5	Estate Tax Consequences	8-2
8.1.6	Form Wills with QTIP and Bypass Trusts—Married Couple with Adult Children	8-3
	Form TP-10–12: Testator with Adult Children: Marital (Pecuniary) Bequest to Marital (QTIP) Trust for Benefit of Spouse of Amount in Excess of Unified Credit Equivalent; Residuary Estate to Credit Shelter Bypass Trust: During Lifetime of Surviving Spouse—Three Alternative Dispositive Methods of Distributions from Trust, Remainder Outright to Living Descendants, <i>per Stirpes</i> ; if Spouse Disclaims Marital Bequest, to Bypass Trust; if Spouse Does Not Survive, Residuary Estate Outright to Living Descendants, <i>per Stirpes</i>	8-3
8.1.7	Client Presentation Charts for TP-10, TP-11, and TP-12	8-12
8.1.8	Key Action Subjects for Strategic Planning	8-15
8.2	Wills with QTIP and Bypass Trusts—Married Couples with Minor Children	8-16
8.2.1	General Description of Wills	8-16
8.2.2	Summary of Dispositive Provisions	8-17
8.2.3	Summary of Dispositive Provisions and Tax Effects of Marital and Credit Shelter/Bypass Trusts	8-17
8.2.4	When to Use These Wills	8-17
8.2.5	Estate Tax Consequences	8-18
8.2.6	Form Wills with QTIP and Bypass Trust—for Married Couples with Minor Children	8-18.1
	Form TP-13–18: Testator with Minor Children: Marital (Pecuniary) Bequest to Marital (QTIP) Trust for Benefit of Spouse of Amount in Excess of Unified Credit Equivalent; Residuary Estate to Credit Shelter/Bypass Trust: During Lifetime of Surviving Spouse —Three Alternative Dispositive Methods of Distributions from Trust, Remainder Outright to Living Descendants, <i>per Stirpes</i> (with Alternatives of Separate Trusts or Pot Trust); if Spouse Disclaims Marital Bequest, to Bypass Trust; if Spouse Does Not Survive, Residuary Estate to Living Descendants, <i>per Stirpes</i> (with Alternatives for Separate Trusts or Pot Trust)	8-20
8.2.7	Client Presentation Charts for TP-13, TP-14, TP-15, TP-16, TP-17, and TP-18	8-29
8.2.8	Key Action Subjects for Strategic Planning	8-37

CHAPTER 9 TAX PLANNING WILLS WITH MARITAL (“A”) AND CREDIT SHELTER (“B”) SHARES: USE OF PECUNIARY CREDIT SHELTER AND RESIDUARY MARITAL BEQUESTS (REVERSE PECUNIARY FORMULA) 9-1

9.1 Overview and Practical Considerations 9-1

9.2 “Reverse Pecuniary” Will with Spray Bypass Trust and Outright Marital Bequest—Married Couples with Adult Children 9-1

9.2.1 General Description of Will 9-1

9.2.2 Summary of Dispositive Provisions 9-2

9.2.3 When to Use This Will 9-2

9.2.4 Estate Tax Consequences 9-3

9.2.5 Form Reverse Pecuniary Will with QTIP and Bypass Trusts 9-3

Form TP-19: Husband with Adult Children: Pecuniary Bequest to Credit Shelter/Bypass Trust—During Lifetime of Wife, Spray Trust for Benefit of Wife and Descendants, Remainder Outright to Living Descendants, *per Stirpes*; Residuary Estate (Amount in Excess of Unified Credit Equivalent) to Wife; if Wife Disclaims Marital Bequest, to Credit Shelter Unified Credit Equivalent) to Wife; if Wife Disclaims Marital Bequest, to Credit Shelter Trust; if Wife Does Not Survive, Residuary Estate Outright to Living Descendants, *per Stirpes* 9-3

9.2.6 Client Presentation Chart for TP-19 9-10

9.2A “Reverse Pecuniary” Will with Bypass Trust for Benefit of Spouse for her Lifetime and Outright Marital Bequest—Married Couples with Adult Children 9-11

9.2A.1 General Description of Will 9-11

9.2A.2 Summary of Dispositive Provisions 9-12

9.2A.3 When to Use This Will 9-12

9.2A.4 Estate Tax Consequences 9-13

9.2A.5 Form Reverse Pecuniary Will with QTIP and Bypass Trusts 9-13

Form TP-19A: Husband with Adult Children: Pecuniary Bequest to Credit Shelter/Bypass Trust—During Lifetime of Wife, for Benefit of Wife, Remainder Outright to Living Descendants, *per Stirpes*; Residuary Estate (Amount in Excess of Unified Credit Equivalent) to Wife; if Wife Does Not Survive, Residuary Estate Outright to Living Descendants, *per Stirpes* 9-13

9.2A.6 Client Presentation Chart for TP-19A 9-14.6

9.3 “Reverse Pecuniary” Will for Married Couples with Adult Children (with QTIP Trust) 9-14.7

9.3.1 General Description of Will 9-14.7

9.3.2 Summary of Dispositive Provisions 9-14.7

CONTENTS

9.3.3	When to Use This Will	9-14.8
9.3.4	Estate Tax Consequences	9-14.8
9.3.5	Form Reverse Pecuniary Will with QTIP and Bypass Trusts	9-14.9
	Form TP-20: Husband with Adult Children: Pecuniary Bequest to Credit Shelter/Bypass Trust During Lifetime of Wife, Spray Trust for Benefit of Wife and Descendants, Remainder Outright to Living Descendants, <i>per Stirpes</i> ; Residuary Estate (Amount in Excess of Unified Credit Equivalent) to Marital (QTIP) Trust for Benefit of Wife, Remainder to Living Descendants, <i>per Stirpes</i> ; if Wife Disclaims Marital Bequest, to Credit Shelter Trust; if Wife Does Not Survive, Residuary Estate Outright to Living Descendants, <i>per Stirpes</i>	9-14.9
9.3.6	Client Presentation Chart for TP-20	9-21
9.4	“Reverse Pecuniary” Wills with Bypass Trust and Outright Marital Bequest for Married Couples with Minor Children	9-22
9.4.1	General Description of Wills	9-22
9.4.2	Summary of Dispositive Provisions	9-22
9.4.3	When to Use These Wills	9-23
9.4.4	Estate Tax Consequences	9-24
9.4.5	Form Reverse Pecuniary Wills with Bypass Trust and Outright Marital Bequest	9-24
	Form TP-21–22: Married Testator with Minor Children: Pecuniary Bequest to Credit Shelter/Bypass Trust During Lifetime of Wife, Spray Trust for Benefit of Wife and Descendants, Remainder to Trusts for Children (Alternative Clauses for Separate Trusts or Pot Trust); Residuary Estate (Amount in Excess of Unified Credit Equivalent) to Spouse; if Spouse Disclaims Marital Bequest, to Credit Shelter Trust; if Spouse Does Not Survive, Residuary Estate to Trusts for Children (Alternative Clauses for Separate Trusts or Pot Trust)	9-25
9.4.6	Client Presentation Charts for TP-21 and TP-22.	9-33
9.5	“Reverse Pecuniary” Wills for Married Couples with Minor Children (with QTIP Trust)	9-35
9.5.1	General Description of Wills	9-35
9.5.2	Summary of Dispositive Provisions	9-36
9.5.3	When to Use These Wills	9-36
9.5.4	Estate Tax Consequences	9-37
9.5.5	Form Reverse Pecuniary Wills with QTIP and Bypass Trust	9-38
	Form TP-23–24: Married Testator with Minor Children: Pecuniary Bequest to Credit Shelter/Bypass Trust—During Lifetime of Wife, Spray	

CONTENTS

	to Living Descendants, <i>per Stirpes</i> : if Spouse Does Not Survive, to Living Descendants, <i>per Stirpes</i>	11-4
11.1.6	Key Action Subjects for Strategic Planning	11-12
11.2	Disclaimer Wills for Married Couples with Minor Children	11-12
11.2.1	Dispositive Provisions of Wills in Category	11-12
11.2.2	Summary of Dispositive Provisions and Tax Effects of Disclaimer Trust	11-12
11.2.3	When to Use These Wills	11-15
11.2.4	Estate Tax Consequences	11-15
11.2.5	Form Wills with Disclaimer Trusts for Married Couple with Minor Children	11-16
	Form DW-4-9: Testator with Minor Children: Outright Gift of Residuary Estate to Spouse with Option to Spouse to Disclaim with Bequest Passing to “Disclaimer Trust” (with Alternative Distribution Methods), Remainder to Living Descendants, <i>per Stirpes</i> (with Alternative Provisions for Trusts for Children); if Spouse Does Not Survive, to Living Descendants, <i>per Stirpes</i> (with Alternative Provisions for Trusts for Children)	11-17
11.2.6	Key Action Subjects for Strategic Planning	11-29

PART V GENERATION-SKIPPING TRANSFER (“GST”) TAX PLANNING WITH GENERATION-SKIPPING TRUSTS—FOR LARGE ESTATES

CHAPTER 12 STRATEGIC PLANNING WITH GENERATION-SKIPPING TRUSTS 12-1

12.1	Overview of Generation-Skipping Transfer Tax (GST)	12-1
12.2	Sheltering the Tax Through the GST Exemption	12-2
12.3	Effective Use of the GST Exemption—Benefits to Children and Tax Savings	12-3
12.4	Allocation of GST Exemption to Assets with Greatest Appreciation Potential	12-3
12.5	Structure of Wills with Generation-Skipping Trusts	12-4
12.6	Use of the First Spouse’s Nonexempt Marital Trust to Allocate GST Exemption of Surviving Spouse	12-5

CHAPTER 13 TAX PLANNING WILL WITH GENERATION-SKIPPING TRUSTS 13-1

13.1	Wills with Generation-Skipping Trusts for Married Couples with Adult Children	13-1
13.1.1	General Description of Will	13-1
13.1.2	Summary of Dispositive Provisions	13-1
13.1.3	Form Will with Generation-Skipping Trust	13-3
	Form GST-1: Husband with Adult Children: Marital	

	Deduction Bequest to Marital (QTIP) Trust of Amount in Excess of Unified Credit Equivalent; Residuary Estate to Credit Shelter (Bypass/Generation-Skipping) Trust for Benefit of Wife, Children, and Descendants of Deceased Child During Lifetime of Wife; upon Death of Wife, Remainder of Exempt Residuary Trust to Children in Separate Trusts for Life, Remainder to Grandchildren with Limited Power of Appointment to Children; upon Death of Wife, Remainder of Marital Trust and Non-Exempt Residuary Trust Outright to Living Descendants, <i>per Stirpes</i>	13-3
13.1.4	Client Presentation Chart for All GST Will	13-12
13.1.5	Key Action Subjects for Strategic Planning	13-15

PART VI WILLS FOR UNMARRIED INDIVIDUALS (SINGLE, WIDOWED, DIVORCED)

CHAPTER 14	WILLS FOR UNMARRIED INDIVIDUALS (SINGLE, WIDOWED, DIVORCED)	14-1
14.1	Overview and Overall Dispositive Summary of Wills Selected	14-1
14.2	Simple Wills for Unmarried Person with Adult Children	14-2
14.2.1	Summary of Dispositive Provisions	14-2
14.2.2	When to Use These Wills	14-2
14.2.3	Estate Tax Consequences	14-3
14.2.4	Form Simple Wills for Unmarried Persons with Adult Children	14-3
	Form UM-1: Unmarried Male Testator with Adult Children: Outright Gift of Residuary Estate to Adult Children	14-3
14.3	Wills for Unmarried Person with Minor Children	14-7
14.3.1	Summary of Dispositive Provisions	14-7
14.3.2	Distribution of Separate Trusts for Children	14-8
14.3.3	Distribution of Pot Trusts for Children	14-8
14.3.4	When to Use These Wills	14-9
14.3.5	Estate Tax Consequences	14-9
14.3.6	Form Simple Wills for Unmarried Persons with Minor Children	14-9
	Form UM-2-3: Unmarried Testator with Minor Children: Gift of Residuary Estate to Trust for Children—Alternative Dispositive Provisions for Separate Trusts and Pot Trust.	14-9
14.4	Will for Unmarried Individuals without Children	14-17
14.4.1	Overview	14-17
14.4.2	Summary of Dispositive Provisions	14-17

CONTENTS

14.4.3	When to Use These Wills	14-18
14.4.4	Estate Tax Consequences	14-18
14.4.5	Form Wills for Unmarried Individuals without Children	14-18
	Form UM-4: Unmarried Male Testator Who Desires to Benefit Friend/Companion: Gift of Residuary Estate to Trust for Friend/Companion for Life, Remainder to Nieces and Nephews (Separate Trusts if under 30)	14-18
14.5	Pour-Over Will to Revocable Trust.	14-26
14.5.1	Summary of Dispositive Provisions	14-26
14.5.2	When to Use These Wills	14-26
14.5.3	Estate Tax Consequences	14-26
14.5.4	Form Pour-Over Will	14-26
	Form UM-5: For Unmarried Male Testator Pour-Over Will—to Revocable Trust Created During Lifetime	14-26
14.6	Wills for Single Individual with Generation-Skipping Trusts	14-30
14.6.1	Overview	14-30
14.6.2	Overall Summary of Dispositive Provisions	14-31
14.6.3	Objective of GST Will for Unmarrieds	14-31
14.6.4	Detailed Summary of Dispositive Provisions of GST Trusts	14-31
14.6.5	When to Use This Will	14-32
14.6.6	Form Will for Unmarried Individuals with Generation-Skipping Trusts.	14-32
	Form UM-6: Unmarried Testator with Adult Children: Residuary Bequest to Be Divided into: (1) Exempt Portion—Generation-Skipping Trusts for Descendants with Alternative Dispositive Structures Including Dynasty Trust; and (2) Nonexempt Portion—Outright to Living Descendants, <i>per Stirpes</i>	14-32
14.6.7	Key Action Subjects for Strategic Planning	14-39

PART VII REVOCABLE (LIVING) TRUSTS AND POUR-OVER WILLS

CHAPTER 15 STRATEGIC PLANNING WITH REVOCABLE TRUSTS		
	AS PRIMARY TESTAMENTARY INSTRUMENT	15-1
15.1	Revocable Trusts as Will Substitutes: Advantages, Disadvantages, and Practical Considerations	15-1
15.1.1	Overview	15-1
15.1.2	Practical Uses, Advantages, and Disadvantages	15-1
	15.1.2.1 <i>Probate Avoidance</i>	15-1
	15.1.2.2 <i>Estate and Income Taxes</i>	15-3
	15.1.2.3 <i>Planning for Incapacity</i>	15-3
	15.1.2.4 <i>Ancillary Administration: Real Estate in More than One State</i>	15-3
	15.1.2.5 <i>Potential for Will Contests</i>	15-3
	15.1.2.6 <i>No Immediate Family</i>	15-4

15.1.3	Summary	15-4
15.2	Mechanics and Operation of Revocable Trust/Pour-Over Will Structure	15-4
15.2.1	Transfer of Assets to Trust	15-4
15.2.2	Trustee	15-4
15.2.3	Dispositive Provisions During Life of Settler and upon Death	15-5
15.2.4	Right to Revoke	15-5
15.2.5	Tax Identification Number	15-5
15.2.6	Tax Consequences of a Revocable Trust.	15-5
	15.2.6.1 Gift Taxes	15-5
	15.2.6.2 Income Tax	15-5
	15.2.6.3 Estate Tax	15-6
15.2.7	Pour-Over Will	15-6
15.3	Overall Summary of Forms	15-6

CHAPTER 16 REVOCABLE TRUSTS AND POUR-OVER WILLS FOR UNMARRIED INDIVIDUALS 16-1

16.1	Overall Summary of Forms and Dispositive Summary	16-1
16.2	Simple Revocable Trust and Pour-Over Will for Unmarried Individual with Adult Children (RT-1 and PO-1).	16-2
16.2.1	Summary of Dispositive Provisions of RT-1	16-2
16.2.2	When to Use This Revocable Trust (RT-1).	16-2
16.2.3	Income, Gift, and Estate Tax Consequences	16-3
16.2.4	Forms	16-3
	Form RT-1: Revocable Trust Agreement for Unmarried Settlor—Outright Disposition to Adult Children at Death of Settlor	16-4
	Form PO-1: For Unmarried Testator/Testatrix Pour-Over Will—to Accompany RT-1	16-10
16.3	Revocable Trust and Pour-Over Will for Unmarried Individuals without Children (RT-2 and PO-2).	16-14
16.3.1	Summary of Dispositive Provisions of RT-2	16-14
16.3.2	When to Use this Revocable Trust	16-14
16.3.3	Income, Gift, and Estate Tax Consequences	16-15
16.3.4	Forms	16-15
	Form RT-2: Revocable Trust Agreement for Unmarried Settlor Who Wishes to Benefit Friend/Companion—to Friend/Companion for Life, Remainder to Nieces and Nephews (in Trust if under 30)	16-15
16.4	Revocable Trusts and Pour-Over Wills for Unmarried Individuals with Children—With Generation-Skipping Trusts (RT-3 and RT-4)	16-24
16.4.1	Summary of Dispositive Provisions of RT-3 and RT-4	16-24
16.4.2	Objective of GST Provisions for Unmarrieds	16-24
16.4.3	Detailed Summary and Estate Tax Effects of Dispositive Provisions of GST-Exempt Trusts (after Settlor’s Death) under RT-3 and RT-4	16-25
16.4.4	When to Use These Revocable Trusts (RT-3 and RT-4)	16-26

CONTENTS

16.4.5 Forms 16-26

Form RT-3: Revocable Trust Agreement for Unmarried Individual with Adult Children—with GST Trusts for Children upon Death of Settlor 16-27

Form RT-4: Revocable Trust Agreement for Unmarried Individual with Adult Children—with Dynasty Trust for Descendants for Maximum Perpetuities Period 16-36

CHAPTER 17 REVOCABLE TRUSTS AND POUR-OVER WILLS FOR MARRIED COUPLES WITHOUT TAX PLANNING (COMBINED ESTATE NOT EXCEEDING LIFETIME EXEMPTION)..... 17-1

17.1 Overview and Practical Considerations. 17-1

17.2 Summary of Dispositive Provisions of RT-5 17-1

17.3 When to Use This Revocable Trust (RT-5). 17-2

17.4 Income, Gift, and Estate Tax Consequences 17-2

17.5 Forms 17-3

Form RT-5: Simple Revocable Trust Agreement for Married Settlor—Outright Disposition to Spouse upon Death of Settlor (to Children if Spouse Does Not Survive) 17-3

Form PO-5: For Married Testator/Testatrix: Pour-Over Will—to Accompany RT-51 17-9

CHAPTER 18 REVOCABLE TRUSTS AND POUR-OVER WILLS WITH CREDIT SHELTER/BYPASS TRUSTS—FOR MARRIED COUPLES WITH COMBINED ESTATES EXCEEDING LIFETIME EXEMPTION 18-1

18.1 Strategic Planning with Credit Shelter/Bypass Trusts. 18-1

18.2 Summary of Dispositive Provisions of RT-6 18-1

18.3 Graphic Summary of Dispositive Provisions of Credit Shelter/Bypass Trust under RT-6 and Estate Tax Effects 18-2

18.4 Alternatives for Structuring Bypass Trust 18-3

18.5 When to Use Revocable Trust RT-6 18-4

18.6 Income, Gift, and Estate Tax Consequences 18-4

18.7 Forms 18-5

Form RT-6: Revocable Trust Agreement for Married Settlor—with Credit Shelter/Bypass Trust 18-5

CHAPTER 19 REVOCABLE TRUSTS AND POUR-OVER WILLS WITH MARITAL/QTIP TRUST IN COMBINATION WITH CREDIT SHELTER/BYPASS TRUST: THE “A-B” TRUST STRUCTURE (COMBINED ESTATES EXCEED LIFETIME EXEMPTION)..... 19-1

19.1 Strategic Planning with “A-B” Trust Structure 19-1

19.2 Federal Tax Requirements of QTIP Trust 19-2

19.3 Summary of Dispositive Provisions of RT-7 19-3

19.4	Graphic Summary of Dispositive Provisions of Credit Shelter/Bypass Trust under RT-7 and Estate Tax Effects	19-3
19.5	When to Use Revocable Trust RT-7	19-5
19.6	Income, Gift, and Estate Tax Consequences	19-5
19.7	Forms	19-6
	Form RT-7: Revocable Trust Agreement for Married Settlor—with Marital and Bypass Trusts	19-7

CHAPTER 20 REVOCABLE TRUST AND POUR-OVER WILL FOR MARRIED COUPLE WITH DISCLAIMER TRUST OPTION UPON DEATH OF SETTLOR

		20-1
20.1	Strategic Planning with Disclaimer Trusts	20-1
20.2	Summary of Dispositive Provisions of RT-8	20-1
20.3	Graphic Summary of Dispositive Provisions of Disclaimer Trust under RT-8 and Estate Tax Effects	20-2
20.4	When to Use Revocable Trust RT-8	20-3
20.5	Income, Gift, and Estate Tax Consequences	20-3
20.6	Forms	20-4
	Form RT-8: Revocable Trust Agreement for Married Settlor—Outright to Spouse with Option for Disclaimer Trust after Death of Settlor	20-4

CHAPTER 21 REVOCABLE TRUST FOR MARRIED SETTLORS WITH GENERATION-SKIPPING TRUSTS

		21-1
21.1	Strategic Planning with Generation-Skipping Trusts: Benefits and Use of the GST Exemption	21-1
21.2	Structure of Revocable Trust Agreement with Generation-Skipping Trust (RT-9)	21-2
	21.2.1 Strategic Objectives under RT-9	21-2
	21.2.2 The Trusts	21-3
	21.2.2.1 <i>Residuary (Credit Shelter) Trust</i>	21-3
21.3	Summary of Dispositive Provisions of RT-9	21-4
21.4	Graphic Summary of Dispositive Provisions of Exempt and Nonexempt Generation-Skipping Trusts under RT-9 and Estate Tax Effects	21-5
21.5	When to Use Revocable Trust RT-9	21-7
21.6	Forms	21-7
	Form RT-9: Revocable Trust Agreement for Married Settlor—with Generation-Skipping Trusts	21-7

PART VIII STRATEGIC ESTATE PLANNING WITH IRREVOCABLE TRUSTS

CHAPTER 22 IRREVOCABLE LIFE INSURANCE TRUSTS (ILITS)

		22-1
22.1	The Life Insurance Trust	22-1
22.2	Tax Strategies to Make Effective Uses of ILITS: Proper <i>Crummey</i> Notices and Avoiding the 3-Year Rule	22-2
	22.2.1 The “ <i>Crummey</i> ” Notice and the Annual Gift Exclusion	22-3

CONTENTS

22.2.2	The 3-Year Rule and Strategies for Avoidance	22-4
22.3	The 7-Step Procedure for Establishing and Maintaining a Life Insurance Trust	22-4
	Form 22-1: Checklist for Establishing and Maintaining an ILIT	22-5
22.4	Life Insurance Trust on One Life—For Married Settlor	22-6
22.4.1	Purposes and Uses of ILIT-1	22-6
22.4.2	Graphic Summary of Dispositive Provisions of ILIT-1 with Estate Tax Effects	22-6
22.4.3	Forms	22-7
	Form ILIT-1: Life Insurance Trust to Hold Policy on Life of Married Settlor	22-7
	Form 22-2: <i>Crummey</i> Notice	22-15
22.5	Life Insurance Trust on Two Lives (For Second-to-Die Policies)—ILIT-2	22-16
22.5.1	Purposes and Practical Uses of Second-to-Die Policies and Special Requirements	22-16
22.5.2	Graphic Summary of Dispositive Provisions of ILIT-2 for Second-to-Die Policy with Generation-Skipping Trusts	22-17
22.5.3	Forms	22-17
	Form ILIT-2: Survivorship Life Insurance Trust to Hold Survivorship Policy with Generation-Skipping Trusts	22-18
CHAPTER 23 TRUSTS FOR MINORS		23-1
23.1	Practical Uses and Overall Comparisons of Trusts with Custodial Transfers	23-1
23.1.2	Section 529 Plans	23-2
	Chart 23-1: Comparison of Section 529 Accounts, Custodial Accounts, and Trusts (2503(c) and <i>Crummey</i>)	23-2
23.2	Section 2503(c)—Minor’s Trusts	23-3
23.2.1	Requirements	23-3
23.2.2	Tax Issues	23-3
23.2.3	Planning Considerations: Extending the 2503(c) Trust beyond Age 21	23-4
23.2.4	Forms for Section 2503(c) Minor Trust	23-4
	Form 23-1: Section 2503(c) Minor’s Trust for One Beneficiary Qualifying for Annual Gift Tax Exclusion	23-4
23.3	<i>Crummey</i> Minor’s Trust	23-9
23.3.1	Requirements and Practical Uses	23-9
23.3.2	Combining <i>Crummey</i> Minor’s Trusts with Generation-Skipping Planning	23-9
23.3.3	Summary of Dispositive Provisions of Forms for <i>Crummey</i> Minor’s Trust	23-10
23.3.4	Forms for <i>Crummey</i> Minor’s Trusts	23-10
	Form 23-2: <i>Crummey</i> Minor’s Trust for One Child with Withdrawal Power—Distribution of Principal to Child at Ages 25, 30, and 35	23-11
	Form 23-3: <i>Crummey</i> Notice—to Accompany <i>Crummey</i> Trusts	23-16

CHAPTER 24 TRUSTS FOR SUBCHAPTER S STOCK 24-1

24.1 Overview: Types of Subchapter S Trusts 24-1

24.2 Qualified Subchapter S Trust (“QSST”): Requirements and Uses 24-1

24.3 The Electing Small Business Trust (“ESBT”): Requirements and Uses. 24-2

24.4 Eligibility of Grantor Retained Annuity Trust (“GRAT”) to Hold S Corporation Stock 24-3

 Form 24-1: Sample QSST Election. 24-4

 Form 24-2: Electing Small Business Trust (“ESBT”) for Descendants of Settlor for Maximum Perpetuities Period 24-5

CHAPTER 25 RETAINED INTEREST TRUSTS: QPRTS AND GRATS. 25-1

25.1 Qualified Personal Residence Trusts 25-1

 25.1.1 Requirements and Practical Uses 25-1

 25.1.2 Illustrations and Computer Projections/Presentation Charts 25-2

 25.1.3 Forms. 25-3

 Form 25-1: Qualified Personal Residence Trust—to Hold Residence of Grantor for 10 Years—Remainder to Descendants. 25-3

25.2 Grantor Retained Annuity Trusts (GRATS) 25-13

 25.2.1 Requirements and Practical Uses 25-13

 25.2.2 Illustrations and Computer Projections/Presentation Charts. 25-14

 25.2.3 Forms 25-15

 Form 25-3: Grantor Retained Annuity Trust—5% Annuity to Grantor for 5 Years—Terminating Distribution to Grantor’s Child 25-15

PART IX ALTERNATIVE DRAFTING FORMS

CHAPTER 26 ALTERNATIVE DRAFTING FORMS. 26-1

26.1 Special Testamentary Trusts 26-1

 26.1.1 Trust for Family Residence (for Benefit of Surviving Spouse for Life, Remainder to Children). 26-1

 Form 26-1: Trust for Family Residence (for Benefit of Surviving Spouse for Life, Remainder to Children) 26-1

 26.1.2 Trust for Vacation Home (for Benefit of Children) 26-2

 Form 26-2: Trust for Vacation Home (for Benefit of Children) 26-2

 26.1.3 Trusts Primarily for Education of Descendants 26-3

 Form 26-3: Grandchildren’s Educational Trust; General Standards with Preference for Education. 26-3

 Form 26-4: Incentive and Distribution Provisions for Children to Attend College 26-3

 Form 26-5: Flexible Guidelines for Trustee for Educational Costs. 26-4

 26.1.4 Credit Shelter/Bypass Trust Giving Surviving Spouse Limited Power of Appointment of Trust Remainder 26-4

CONTENTS

	Form 26-6: Credit Shelter/Bypass Trust Giving Surviving Spouse Limited Power of Appointment of Trust Remainder.	26-4
26.1.5	Qualified Domestic Trust (QDOT)	26-5
26.1.6	Provisions for Person with Special Needs	26-5
	Form 26-6A: Testamentary Supplemental Needs Trust	26-5
26.1.7	Generation-Skipping Trust—General Power of Appointment upon Child’s Death to Prevent Imposition of GST Tax	26-6
	Form 26-7: Generation-Skipping Trust—Providing for General Power of Appointment upon Child’s Death to Prevent Imposition of GST Tax	26-6.1
26.1.8	Trust for Client’s Parents after Client’s Death	26-6.1
	Form 26-8: Trust for Client’s Parents after Client’s Death (Broad).	26-6.2
26.2	Special Provisions for Closely Held Business Interest	26-7
26.2.1	Closely Held Business Power for Fiduciaries	26-7
	Form 26-9: Broad Closely Held Business Power for Fiduciaries	26-7
26.2.2	Right of First Refusal	26-8
	Form 26-10: Right of First Refusal for Disposition of Corporate Stock	26-8
	Form 26-11: Right of First Refusal for Disposition of Interest in Limited Liability Company.	26-8
26.2.3	Compliance with “Buy–Sell”	26-9
	Form 26-12: Compliance with “Buy–Sell”.	26-9
26.3	Disposition of Bodily Parts	26-9
26.3.1	Cremation	26-9
	Form 26-13: Cremation.	26-9
26.3.2	Anatomical Gifts	26-10
26.4	Specific Bequests.	26-10
26.4.1	Specific Bequest of Tangible Personal Property of Life Estate to Spouse.	26-10
	Form 26-14: Specific Bequest of Tangible Personal Property of Life Estate to Spouse	26-10
26.4.2	Specific Bequests to Grandchild under New York Uniform Transfers to Minors Act.	26-10
	Form 26-15: Specific Bequests to Grandchild under New York Uniform Transfers to Minors Act.	26-11
26.4.3	Gift to Surviving Spouse in Trust until Death or Remarriage.	26-11
	Form 26-16: Gift to Surviving Spouse in Trust until Death or Remarriage	26-11
26.5	Special Provisions Where Estate Consists of Stock in Subchapter S Corporation.	26-11
26.5.1	Subchapter S Provisions	26-11
	Form 26-17: Subchapter S Provisions.	26-12
26.6	Miscellaneous Provisions	26-13
26.6.1	Specific Exercise of Testamentary Power of Appointment	26-13

	Form 26-18: Specific Exercise of Testamentary Power of Appointment	26-13
26.6.2	Forgiveness of Debt at Death	26-13
	Form 26-19: Forgiveness of Debt at Death (Unrecorded Debt)	26-13
26.6.3	Omittal of Spouse—Second Marriage	26-14
	Form 26-20: Omittal—Spouse from Second Marriage	26-14
26.6.4	Omittal Due to Joining of Cult	26-14
	Form 26-21: Omittal—Due to Joining of Cult	26-14
26.6.5	Request for Use of Specific Investment Advisor	26-14
	Form 26-22: Request for Use of Specific Investment Advisor	26-14
26.6.6	Request for Use of Specific Attorney to Handle/Advise Estate Administration	26-15
	Form 26-23: Request for Use of Specific Attorney to Handle/Advise Estate Administration	26-15
26.6.7	<i>In Terrorem</i> Provision	26-15
	Form 26-24: <i>In Terrorem</i> Provision	26-15
26.6.8	Provision Specifically Naming Children in Will	26-16
	Form 26-25: Provision Specifically Naming Children in Will	26-16
26.6.9	Alternative Tax Clause—Apportionment for Nonprobate Property	26-16
	Form 26-26: Alternative Tax Clause—Apportionment for Nonprobate Property	26-16
26.6.10	Alternative Tax Clause—Exclusion of Certain Taxes	26-16
	Form 26-27: Alternative Tax Clause—Exclusion of Certain Taxes	26-17

PART X SUMMARIES OF SELECT ESTATE PLANNING PRACTICE AREAS AND STRATEGIES

CHAPTER 27 SELECTED ESTATE PLANNING SUMMARIES:

	NEW YORK AND FEDERAL LAW	27-1
27.1	The New York Law of Intestacy and Necessity of Wills	27-1
	27.1.1 Overview	27-1
	27.1.2 Operation of Intestacy Law—Share of Surviving Spouse and Others	27-1
	27.1.3 Necessity of Will and Dangers of Dying Intestate	27-1
	27.1.4 Necessity of Will Even with Other Forms of Testamentary Disposition	27-4
27.2	Organizational Checklist of Will: Comments and Strategic Practice Pointers	27-5
	27.2.1 Preamble/Exordium Clause (Introductory Paragraph)	27-5
	27.2.2 Definitions and Appointment of Fiduciary	27-6
	27.2.3 Funeral Arrangements	27-6
	27.2.4 Debts	27-7
	27.2.5 Specific Bequests; Disposition of Tangible Personal Property; Principal Residence	27-7
	27.2.6 Payment of Taxes	27-7

CONTENTS

27.2.7	Residuary Estate	27-8
27.2.8	Dispositive Provisions (Other than Specific Bequests).	27-8
27.2.9	The “Catastrophic”/“Catch-all” Provision	27-9
27.2.10	Fiduciary Powers/Administrative Provisions Re: Trustees and Executors	27-9
27.2.11	Insurance or Pension Plan	27-9
27.2.12	Facility of Payment Provisions	27-10
27.2.13	Survivorship/Simultaneous Death	27-10
27.2.14	Rule against Perpetuities	27-10
27.2.15	Headings	27-10
27.2.16	Signature and Attestation Clauses (Final Paragraphs)	27-10
27.3	The Federal Gift and Estate Transfer Tax System—In a Nutshell—with Impact of the Economic Growth and Tax Relief Reconciliation Act of 2001; Planning for the New York Estate Tax and Generation-Skipping Transfer Tax	27-11
27.3.1	The Basics	27-11
27.3.2	Planning for Unified Credit/Exemption Equivalent Amount—In a Nutshell	27-13
27.3.3	Calculating the Estate Tax	27-14
27.3.4	Planning for the New York Estate Tax	27-15
27.4	Generation-Skipping Transfer Tax—In a Nutshell	27-17
27.4.1	Purpose	27-17
27.4.2	Mechanics and Application	27-17
27.4.3	Transfers Subject to GST Tax	27-18
27.4.4	Transfers Exempt from GST Tax	27-18.1
27.4.5	Computing GST Tax	27-18.2
27.4.6	Administration and Return Requirements	27-18.2
27.4.7	New York GST Considerations	27-18.2
27.5	“ <i>Per Stirpes</i> ” and “ <i>Per Capita</i> ”: Explanation and Examples	27-18.3
27.6	Formula Clauses for Marital and Bypass Trusts—Some Technical Considerations	27-20
27.7	Spousal Right of Election in New York	27-21
27.7.1	Statutory Share	27-21
27.8	QDOTS and the Noncitizen Spouse	27-21
27.9	Assets Passing Outside the Will (Nonprobate Assets) by Operation of Law	27-22
27.9.1	Jointly Owned Property	27-22
	27.9.1.1 <i>Tenancy-in-Common</i>	27-23
	27.9.1.2 <i>Joint Tenancy with Right of Survivorship</i>	27-23
	27.9.1.3 <i>Tenancy by the Entirety</i>	27-23
27.9.2	Life Insurance	27-24
27.9.3	Qualified Retirement Plan Assets	27-24
27.10	Proper Will Formalities in New York—Execution, Revocation, and Amendment: Technical Requirements and Practical Considerations	27-24
27.10.1	Requirements of Will Execution	27-24
	Form 27-1: Instruction Sheet for Client Where Attorney Does Not Supervise Execution of Will	27-26
27.10.2	Who May Execute a Will and Codicil	27-26

27.10.3	Testamentary Capacity	27-27
27.10.4	Proper Will Revocation and Amendment	27-27
27.10.4.1	<i>Proper Will Revocation—Statement of Revocation or Obliteration</i>	27-27
27.10.4.2	<i>Proper Will Amendment—The Codicil</i>	27-27
27.10.4.2.1	<i>Technical Requirements</i>	27-27
	Form 27-2: Sample Codicil	27-28
27.10.5	Other Important Considerations for Wills under New York Law	27-30
27.10.5.1	<i>Holographic Wills</i>	27-30
27.10.5.2	<i>Wills Executed Outside of New York</i>	27-30
27.10.5.3	<i>Dating and Initialing the Will</i>	27-30
27.11	Changes in the Law Governing Adjustments between Principal and Income under New York Law	27-30
27.11.1	History	27-31
27.11.1.1	<i>The Prudent Person Rule</i>	27-31
27.11.1.2	<i>The Prudent Investor Rule</i>	27-31
27.11.2	Changes in the Prudent Investor Rule, Effective January 1, 2002: The Power to Adjust	27-32
27.11.3	Optional Unitrust Provision Effective in 2002	27-32
27.11.4	Changes to the Principal and Income Act Effective in 2002	27-33
27.11.5	Interface with Federal Tax Law	27-33
27.11.6	Forms in This Book	27-33

CHAPTER 28 SELECTED PLANNING STRATEGIES AND TECHNIQUES 28-1

28.1	Use of “5 & 5” Powers in Trusts	28-1
28.2	Flexible Estate Planning with Limited Powers of Appointment	28-2
28.3	Trusts for Children—Pot Trusts vs. Separate Trusts	28-3
28.4	The Pitfall of Joint Ownership by Spouses and Solution	28-4
28.5	Selection of Executors, Trustees, and Guardians: Strategies and Recommendations	28-5
28.5.1	Executors (Executors)	28-5
	Form 28-1: Disclosure Under SCPA 2307-a	28-7
28.5.2	Trustees	28-7
28.5.2.1	<i>Succession, Removal, and Replacement of Trustees—Tax Aspects</i>	28-8
28.5.3	Guardians	28-8
28.6	Use of Disclaimers in Planning Beneficiary Designations	28-8.1
28.7	Techniques to Reduce Taxes in Connection with Specific Bequests or Cash Legacies	28-9
28.7.1	Where Beneficiary Other than Spouse is Intended Recipient	28-9
28.7.2	Where Charity Is Intended Recipient	28-9
28.8	Preserving Wealth with a Dynasty (GST) Trust	28-10
28.9	Outright Marital Bequest vs. Trust for Spouse: Planning Considerations	28-10
28.10	Revised Planning for Surviving Spouse after Death of First Spouse	28-12
28.10.1	Planning for Remarriage: QTIP Trust/Prenuptial Agreements	28-12
28.10.2	Use of the Residence	28-12
28.10.3	The QTIP Trust: Tax Traps upon the Surviving Spouse’s Death	28-12

CONTENTS

28.10.4	Credit Shelter/Bypass Trusts: Strategic Use During Lifetime of Surviving Spouse	28-13
28.11	The Credit Shelter/Bypass Trust: Rights and Protections Available to Surviving Spouse and Asset Protection Considerations	28-14
28.11.1	Rights of Surviving Spouse in Credit Shelter Trust	28-14
28.11.2	Selecting the Appropriate Allocation of Income and Principal Among the Spouse and Beneficiaries	28-15
28.12	Strategies for Financing the Payment of Estate Taxes on the Business Entity — Statutory Elections by Executors	28-16
28.12.1	Section 2032A Special Use Valuation for Forms	28-17
28.12.2	Section 303 Redemption to Pay Estate Taxes and Administration Expenses	28-18
28.12.3	Section 6166 Deferral of Estate Taxes for Closely Held Businesses	28-19
CHAPTER 29 CHARITABLE GIFT PLANNING		29-1
29.1	Closely Held Corporate Charitable Contributions	29-1
29.1.1	Constructive Dividends	29-1
29.1.2	Redemption of Charitable Gifts of Business Interests	29-2
29.2	Individual Gifts and Bequests	29-4
29.2.1	Income Tax Deduction Limits	29-4
29.2.2	Unlimited Gift and Estate Tax Deduction	29-6
29.2.2.1	<i>Limits on Deduction for Tangible Personal Property</i>	29-6.1
29.3	Charitable Remainder Trusts	29-6.1
29.3.1	General Features of CRTs	29-7
29.3.2	Unique Aspects of the Charitable Remainder Unitrust (CRUT)	29-9
29.3.2.1	<i>NIMCRUTS</i>	29-9
29.3.2.2	<i>Mandatory Provisions</i>	29-11
29.3.2.3	<i>Optional Provisions</i>	29-13
29.3.3	Unique Aspects of the Charitable Remainder Annuity Trust (CRAT)	29-14
29.3.3.1	<i>Mandatory Provisions</i>	29-15
29.3.3.2	<i>Optional Provisions</i>	29-16
29.3.4	Taxation of the Donor	29-17
29.3.4.1	<i>Income Tax Deduction</i>	29-17
29.3.4.2	<i>Capital Gains</i>	29-18
29.3.4.3	<i>Gift Tax</i>	29-18
29.3.4.4	<i>Estate Tax</i>	29-18
29.3.4.5	<i>Generation-Skipping Transfer Tax</i>	29-18
29.3.5	Income Taxation of the Trust	29-19
29.3.5.1	<i>Reporting Requirements for a CRT</i>	29-20
29.3.6	Income Taxation of the Non-Charitable Beneficiary	29-20
29.3.7	Prohibited Transactions Rules	29-23
29.3.8	Planning Considerations	29-23
29.3.8.1	<i>Funding the CRT</i>	29-23
29.3.8.2	<i>Marital Deduction Planning — Spousal CRT or QTIP with Remainder to Charity</i>	29-25

	29.3.8.3	<i>Selecting a Trustee</i>	29-26
	29.3.8.4	<i>Choosing the CRUT or the CRAT</i>	29-26
	29.3.8.5	<i>Investment Issues</i>	29-27
	29.3.8.6	<i>Economics of CRT Planning Need to Be Analyzed</i>	29-27
29.3.9		Some Applications	29-27
	29.3.9.1	<i>Retirement Plan Supplement or Substitute</i>	29-27
	29.3.9.2	<i>Asset Diversification Opportunity</i>	29-28
	29.3.9.3	<i>Closely Held Businesses</i>	29-28
	29.3.9.4	<i>Charitable Giving and Wealth Replacement</i>	29-29
	29.3.9.5	<i>Using Life Insurance and the CRUT as a Tax-Favored Means of Providing an Annuity for Donor's Spouse</i>	29-29
	29.3.9.6	<i>A Strategy for Dealing with Income in Respect of Decedent (IRD)</i>	29-29
	29.3.10	Effect of Spousal Right of Election on CRAT and CRUT	29-29
29.4		Charitable Lead Trust	29-30
	29.4.1	Taxation of Lead Trusts	29-31
	29.4.2	Drafting Testamentary Lead Trusts	29-32
	29.4.3	Planning for Lead Trusts	29-33
29.5		Gifts of Remainder Interests in Residence or Farm	29-34
	29.5.1	Split-Interests in Tangible Personal Property	29-35
29.5A		Conservation Easements	29-36
29.6		Private Foundations	29-38
	29.6.1	Definition of Private Foundation	29-38
	29.6.2	Structure of a Private Foundation	29-38
	29.6.3	Prohibited Transaction Rules	29-39
	29.6.3.1	<i>Excise Tax on Investment Income — Section 4940 of the Code</i>	29-39
	29.6.3.2	<i>Taxes on Self-Dealing — Section 4941 of the Code</i>	29-39
	29.6.3.3	<i>Minimum Distributions — Section 4942 of the Code</i>	29-41
	29.6.3.4	<i>Excess Business Holdings — Section 4943 of the Code</i>	29-43
	29.6.3.5	<i>Jeopardy Investments — Section 4944 of the Code</i>	29-43
	29.6.3.6	<i>Taxable Expenditures — Section 4945 of the Code</i>	29-44
	29.6.3.7	<i>Additional Taxes/Abatement</i>	29-45
	29.6.4	Qualification as 501(c)(3) Organization	29-45
	29.6.5	Filing Requirements for Private Foundations	29-46
	29.6.6	Should a Private Foundation Be Created?	29-46
29.7		Alternatives to Private Foundations	29-46
	29.7.1	Private Operating Foundation	29-46
	29.7.2	Restricted Gift to Public Charity	29-47
	29.7.3	Donor Directed Fund	29-47
	29.7.4	Donor Advised Fund	29-47
	29.7.5	Supporting Organization	29-48.1

CONTENTS

29.7.6	Publicly Supported Charity	29-50
29.8	Sample Charitable Trust Forms	29-50
Form 29-1	Sample <i>Inter Vivos</i> Charitable Remainder Annuity Trust — One Life	29-50
Form 29-2	Sample <i>Inter Vivos</i> Charitable Remainder Annuity Trust — Term of Years	29-53
Form 29-3	Sample <i>Inter Vivos</i> Charitable Remainder Annuity Trust — Two Lives, Concurrent and Consecutive Interests.	29-55
Form 29-4	Sample Testamentary Charitable Remainder Annuity Trust — One Life	29-58
Form 29-5	Sample Testamentary Charitable Remainder Annuity Trust — Term of Years	29-59
Form 29-6	Sample Testamentary Charitable Remainder Annuity Trust — Two Lives, Consecutive Interests	29-61
Form 29-7	Sample Testamentary Charitable Remainder Annuity Trust — Two Lives, Current and Consecutive Interests.	29-62
Form 29-8	Sample <i>Inter Vivos</i> Charitable Remainder Unitrust — One Life.	29-64
Form 29-9	Sample <i>Inter Vivos</i> Charitable Remainder Unitrust — Term of Years.	29-64
Form 29-10	Sample <i>Inter Vivos</i> Charitable Remainder Unitrust — Two Lives, Consecutive Interests.	29-68
Form 29-11	Sample <i>Inter Vivos</i> Charitable Remainder Unitrust — Two Lives, Concurrent and Consecutive Interests.	29-71
Form 29-12	Sample Testamentary Charitable Remainder Unitrust — One Life.	29-73
Form 29-13	Sample Testamentary Charitable Remainder Unitrust — Term of Years	29-75
Form 29-14	Sample Testamentary Charitable Remainder Unitrust — Two Lives, Consecutive Interests.	29-77
Form 29-15	Sample Testamentary Charitable Remainder Unitrust — Two Lives, Concurrent and Consecutive Interests.	29-79
Form 29-16	Sample <i>Inter Vivos</i> Nongrantor Charitable Lead Annuity Trust.	29-81
Form 29-17	Sample <i>Inter Vivos</i> Grantor Charitable Lead Annuity Trust.	29-82
Form 29-18	Sample Testamentary Charitable Lead Annuity Trust.	29-84
Form 29-19	Sample <i>Inter Vivos</i> Nongrantor Charitable Lead Unitrust.	29-85
Form 29-20	Sample <i>Inter Vivos</i> Grantor Charitable Lead Unitrust.	29-87
Form 29-21	Sample Testamentary Charitable Lead Unitrust	29-89

PART XI APPENDICES

APPENDIX A	ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001	CD-ROM
APPENDIX B	INTERNAL REVENUE CODE—ESTATE AND GIFT TAXES (SUBTITLE B, §§ 2001-2704)	CD-ROM

APPENDIX C	TREASURY REGULATIONS—ESTATE AND GIFT PROVISIONS (UNDER SUBTITLE B)	CD-ROM
APPENDIX D	STATUTORY CHANGES TO THE NEW YORK ESTATES, POWERS AND TRUSTS LAW EFFECTIVE IN 2002 GOVERNING ADJUSTMENTS BETWEEN PRINCIPAL AND INCOME	CD-ROM
APPENDIX E	IRS REVENUE PROCEDURES 2003-53 THROUGH 2003-60 AND 2005-52 THROUGH 2005-59	CD-ROM
PART XII	INDICES	
Subject Index	INDEX-1
Forms Index	INDEX-30