

Table of Contents

CHAPTER 1

THE ESTATE PLANNING PROCESS: AN OVERVIEW

by Judith G. McMullen

- I. Scope [§ 1.1]**
- II. What the Lawyer Needs to Be Thinking About [§ 1.2]**
- III. Overview of Commonly Used Estate Planning Tools [§ 1.3]**
 - A. In General [§ 1.4]
 - B. Wills [§ 1.5]
 - C. Trusts [§ 1.6]
 - D. Changes in Form of Property Ownership [§ 1.7]
 - E. Durable Powers of Attorney [§ 1.8]
 - F. Gifts [§ 1.9]
 - G. Living Wills and Powers of Attorney for Health Care [§ 1.10]
 - H. Contracts to Make Wills [§ 1.11]
 - I. Marital Property Agreements [§ 1.12]
 - J. Changes in Business Structure [§ 1.13]
 - K. Disclaimers [§ 1.14]
 - L. Powers of Appointment [§ 1.15]
- IV. Important Estate Planning Issues [§ 1.16]**
 - A. Checklist [§ 1.17]
 - B. Appropriateness of a Will [§ 1.18]
 - C. Interrelationship of Probate and Nonprobate Transfers [§ 1.19]
 - D. Appropriateness of Changes in Forms of Ownership [§ 1.20]
 - E. Competing Needs and Desires of Children, Parents, and Persons with Disabilities [§ 1.21]
 - F. Appropriate Methods of Withholding Control over Transferred Property [§ 1.22]
 - G. Tax Concerns [§ 1.23]
 - 1. In General [§ 1.24]
 - 2. Federal Taxes [§ 1.25]
 - 3. Wisconsin Taxes [§ 1.26]
 - H. Appropriateness of Structured Plan for Lifetime Gifts [§ 1.27]
 - I. Marital Property Considerations [§ 1.28]
 - J. Issues Specific to Owners of Closely Held Businesses [§ 1.29]
- V. Familiarity with Client’s Situation, Needs, and Goals [§ 1.30]**
- VI. Postmortem Estate Planning [§ 1.31]**
- VII. Conclusion [§ 1.32]**

CHAPTER 2

REPRESENTING THE CLIENT: THE BASICS

by Mark H. T. Fuhrman & David P. Weller

I. Scope of Chapter [§ 2.1]

II. The Estate Planning Representation: An Overview [§ 2.2]

- A. Initial Client Contact and Information Gathering [§ 2.3]
 - 1. Common Client Questions [§ 2.4]
 - 2. Emergency Estate Planning When Death Is Imminent [§ 2.5]
 - 3. Client Preparation for Initial Conference [§ 2.6]
 - 4. Client Information Systems [§ 2.7]
 - 5. Attorney Preparation for Initial Conference [§ 2.8]
- B. Ethical Issues in Estate Planning Representations [§ 2.9]
 - 1. Identification of Client [§ 2.10]
 - 2. Representation of a Married Couple [§ 2.11]
 - 3. Wis. Stat. Ch. 770 Same-Sex Domestic Partners [§ 2.12]
 - 4. Wis. Stat. Ch. 40 State Employee Domestic Partners [§ 2.13]
 - 5. Drafting Attorney as Beneficiary [§ 2.14]
 - 6. Drafting Attorney as Fiduciary [§ 2.15]
 - 7. Drafting Attorney Named to Probate Estate [§ 2.16]
 - 8. Communication of Basis for Fees [§ 2.17]
- C. Initial Client Conference [§ 2.18]
 - 1. In General [§ 2.19]
 - 2. Organization and Record of Conference [§ 2.20]
 - 3. Review of Client Information [§ 2.21]
 - 4. Use of Checklists [§ 2.22]
 - 5. Anticipation of Premature Death and Changes in Circumstances [§ 2.23]
 - 6. Client Goals and Selection of Appropriate Documents [§ 2.24]
 - 7. Scope of Representation [§ 2.25]
- D. Document Drafting and Execution [§ 2.26]
 - 1. Use of Standard Forms [§ 2.27]
 - 2. Postconference Follow-Up [§ 2.28]
 - 3. Client Review of Draft Documents [§ 2.29]
 - 4. Sample Letter to Client (EST-0001) [§ 2.30]
 - 5. Unresponsive Clients [§ 2.31]
 - 6. Conference to Execute Documents [§ 2.32]
 - 7. Fees [§ 2.33]

III. Master Information List [§ 2.34]

- A. Introduction [§ 2.35]
- B. Master Information List Form (EST-0002) [§ 2.36]
- C. Master Information List Annotated [§ 2.37]
 - 1. Personal Information [§ 2.38]
 - a. In General [§ 2.39]
 - b. Name(s) [§ 2.40]
 - c. Social Security Number(s) [§ 2.41]
 - d. Date(s) of Birth [§ 2.42]
 - e. Address and Phone Numbers [§ 2.43]
 - f. Issue [§ 2.44]
 - g. Other Relatives [§ 2.45]
 - h. Prior Marriages; Children by Prior Marriages [§ 2.46]
 - i. Adopted Children [§ 2.47]
 - j. Children Not Adopted [§ 2.48]

2. Checklist for Additional Personal Information [§ 2.49]
 - a. In General [§ 2.50]
 - b. Unequal Treatment of Children [§ 2.51]
 - c. Disabled Beneficiaries [§ 2.52]
 - d. Antagonistic Relatives [§ 2.53]
 - e. Spendthrifts [§ 2.54]
 - f. Prior Contractual Arrangements [§ 2.55]
 - g. Mental Competence [§ 2.56]
 - h. Undue Influence [§ 2.57]
 - i. Health of Client and Beneficiaries [§ 2.58]
 - j. Organ Donation and Anatomical Gifts [§ 2.59]
3. Financial Information [§ 2.60]
 - a. Assets [§ 2.61]
 - b. Title to Assets [§ 2.62]
 - c. Acquisition of Assets [§ 2.63]
 - d. Future Gifts or Inheritances [§ 2.64]
 - e. Employment Information [§ 2.65]
 - f. Marital Property Agreement [§ 2.66]
 - g. Debts and Obligations [§ 2.67]
4. Checklist for Additional Financial Information [§ 2.68]
 - a. Gifts [§ 2.69]
 - b. Trusts [§ 2.70]
 - c. Powers [§ 2.71]
 - d. Future Interests [§ 2.72]
 - e. Intended Future Dispositions of Property [§ 2.73]

IV. Selection of Appropriate Documents [§ 2.74]

- A. Overview [§ 2.75]
- B. Survivorship Interests and Need for Will [§ 2.76]
 1. Simultaneous Deaths [§ 2.77]
 2. Assets Not Governed by Survivorship Arrangement [§ 2.78]
 3. Death of Surviving Owner [§ 2.79]
 4. Survivorship Interest and Transfer Tax [§ 2.80]
- C. Common Uses of a Will or Trust [§ 2.81]
 1. In General [§ 2.82]
 2. Checklist [§ 2.83]
 3. Avoid Statutory Rules of Intestacy [§ 2.84]
 4. Provide for Charitable Gifts [§ 2.85]
 5. Plan Disposition of Marital Property Assets [§ 2.86]
 6. Divide Assets Among Spouses' and Domestic Partners' Relatives [§ 2.87]
 7. Diminish Effect of Simultaneous Deaths and Multiple Sequential Deaths [§ 2.88]
 8. Designate Personal Representative, Trustee [§ 2.89]
 9. Nominate Children's Guardian [§ 2.90]
 10. Decrease Expense and Time of Probate [§ 2.91]
 - a. In General [§ 2.92]
 - b. Waive Bond for Fiduciaries [§ 2.93]
 - c. Reduce Fees [§ 2.94]
 - d. Empower Personal Representative to Act Without Court Approval [§ 2.95]
 - e. Request Informal Probate [§ 2.96]
 - f. Avoid Probate [§ 2.97]
 11. Create Structure for Planned Disclaimers [§ 2.98]
 12. Create Trust for Minors [§ 2.99]
 - a. Avoid Guardianship [§ 2.100]
 - b. Postpone Distribution [§ 2.101]
 - c. Postpone Division of Estate [§ 2.102]

- d. Give Trustee Discretionary Authority [§ 2.103]
 - e. Avoid Estate Administration [§ 2.104]
 - f. Retain Tax Flexibility [§ 2.105]
 - g. Control Costs [§ 2.106]
- 13. Create Trust for Aged [§ 2.107]
 - a. In General [§ 2.108]
 - b. Public Assistance Considerations [§ 2.109]
- 14. Create Trust for Disabled Persons [§ 2.110]
 - a. In General [§ 2.111]
 - b. Public Assistance Considerations [§ 2.112]
- 15. Save Death Taxes [§ 2.113]
 - a. In General [§ 2.114]
 - b. Take Advantage of Marital Deduction [§ 2.115]
 - c. Make Full Use of Applicable Exclusion Amount [§ 2.116]
- D. Wisconsin Statutory Wills [§ 2.117]
- E. What a Will or Trust Cannot Do [§ 2.118]
 - 1. Checklist [§ 2.119]
 - 2. Reclassify Marital Property [§ 2.120]
 - 3. Dispose of Surviving Spouse's Marital Property [§ 2.121]
 - 4. Transfer Assets in Co-ownership with Right of Survivorship [§ 2.122]
 - 5. Transfer Assets in P.O.D. or T.O.D. Arrangement [§ 2.123]
 - 6. Transfer Government Bonds Controlled by Federal Regulation [§ 2.124]
 - 7. Change Beneficiary Designations [§ 2.125]
 - 8. Disinherit Surviving Spouse, Domestic Partner, and Minor Children [§ 2.126]
 - 9. Transfer Property Free of Rights of Creditors [§ 2.127]
 - 10. Ensure Effective Anatomical Gifts [§ 2.128]
 - 11. Ensure Transmittal of Funeral and Burial Instructions [§ 2.129]
 - 12. Ensure Transmittal of Preferences for Certain Lifetime Arrangements [§ 2.130]
 - a. Limit Use of Life-Sustaining Measures [§ 2.131]
 - b. Nominate Own Guardian [§ 2.132]
 - c. Create Power of Attorney [§ 2.133]
- F. Common Uses of a Marital Property Agreement [§ 2.134]
 - 1. Checklist [§ 2.135]
 - 2. Classify Property as Individual [§ 2.136]
 - a. In General [§ 2.137]
 - b. Guarantee Effectiveness of Specific Gifts [§ 2.138]
 - c. Guarantee Effectiveness of Buy-Sell Agreements [§ 2.139]
 - d. Guarantee Effectiveness of Beneficiary Designation [§ 2.140]
 - 3. Achieve Adjustment in Income Tax Basis [§ 2.141]
 - 4. Preserve Right to Dispose of Property Brought into Second Marriage [§ 2.142]
 - 5. Make Testamentary Dispositions Contractual [§ 2.143]
- V. Document Drafting [§ 2.144]**
 - A. In General [§ 2.145]
 - B. Simple Will [§ 2.146]
 - 1. Checklist [§ 2.147]
 - 2. Specific Gifts [§ 2.148]
 - 3. Disposition of Residue [§ 2.149]
 - 4. Survivorship Clause [§ 2.150]
 - 5. Personal Representative and Alternate [§ 2.151]
 - 6. Guardian [§ 2.152]
 - C. Trust for Minors [§ 2.153]
 - 1. Checklist [§ 2.154]
 - 2. Basic Information [§ 2.155]
 - 3. Trustee and Alternate Trustee [§ 2.156]

- 4. Trust Corpus [§ 2.157]
- 5. Separate Funds [§ 2.158]
- 6. Use of Corpus and Income [§ 2.159]
- 7. Final Distribution of Corpus [§ 2.160]
- 8. Death of Beneficiary Before Receiving Corpus [§ 2.161]
- 9. Powers of Trustee [§ 2.162]
- D. Trust for Elderly or Disabled Persons [§ 2.163]
 - 1. Checklist [§ 2.164]
 - 2. Basic Information [§ 2.165]
 - 3. Trustee and Alternate Trustee [§ 2.166]
 - 4. Trust Corpus [§ 2.167]
 - 5. Use of Corpus and Income [§ 2.168]
 - 6. Final Distribution of Corpus [§ 2.169]
 - 7. Powers of Trustee [§ 2.170]
 - 8. Use of Custodial Trust [§ 2.171]
- E. Trust for Spouse [§ 2.172]
 - 1. Checklist [§ 2.173]
 - 2. Basic Information [§ 2.174]
 - 3. Federal Estate Tax [§ 2.175]
 - 4. Trustee and Alternate Trustee [§ 2.176]
 - 5. Trust Corpus [§ 2.177]
 - 6. Use of Corpus and Income [§ 2.178]
 - 7. Beneficiaries Other Than Spouse [§ 2.179]
 - 8. Final Distribution of Corpus [§ 2.180]
 - 9. Effect of Remarriage [§ 2.181]
 - 10. Powers of Trustee [§ 2.182]
 - 11. Spouse's Right to Purchase Assets [§ 2.183]
- F. Marital Property Agreement [§ 2.184]
 - 1. Checklist [§ 2.185]
 - 2. Classification of Property [§ 2.186]
 - 3. Management and Control During Marriage [§ 2.187]
 - 4. Divorce [§ 2.188]
 - 5. Testamentary Disposition [§ 2.189]
 - 6. Bar of Elective Rights [§ 2.190]
 - 7. Allocation of Debts [§ 2.191]
 - 8. Enforceability of Agreement [§ 2.192]
- G. Other Common Documents [§ 2.193]
 - 1. Checklist [§ 2.194]
 - 2. Durable Power of Attorney [§ 2.195]
 - 3. Living Will [§ 2.196]
 - 4. Nomination of Own Guardian [§ 2.197]
 - 5. Power of Attorney for Health Care [§ 2.198]
 - a. In General [§ 2.199]
 - b. A Deed to Establish T.O.D. Arrangement [§ 2.200]
 - c. Authorization for Final Disposition of Remains [§ 2.201]

VI. Document Execution [§ 2.202]

- A. In General [§ 2.203]
 - 1. Checklist [§ 2.204]
 - 2. Review of Documents with Client [§ 2.205]
 - a. In General [§ 2.206]
 - b. Sample Reminder Checklist (EST-0003) [§ 2.207]
 - 3. Interlineations Before Execution [§ 2.208]
 - 4. Recommended Procedure for Document Execution [§ 2.209]
 - 5. Procedures for Preventing Fraud [§ 2.210]

- 6. Procedures for Preserving Documents' Effectiveness Against Possible Contest [§ 2.211]
- 7. Preparation and Execution of Copies [§ 2.212]
- B. Wills [§ 2.213]
 - 1. Testamentary Capacity [§ 2.214]
 - 2. Attestation Clause [§ 2.215]
 - 3. Witnesses [§ 2.216]
 - a. In General [§ 2.217]
 - b. Number of Witnesses [§ 2.218]
 - c. Drafting Attorney as Witness [§ 2.219]
 - d. Executor, Guardian, Trustee, or Probate Attorney as Witness [§ 2.220]
 - e. Beneficiary or Beneficiary's Spouse as Witness [§ 2.221]
 - f. Competence of Witness [§ 2.222]
 - g. Residence of Witness [§ 2.223]
 - h. Doctor or Mental Health Professional as Witness [§ 2.224]
 - 4. Execution Procedure [§ 2.225]
 - 5. Oral Wills [§ 2.226]
 - 6. Holographic Wills [§ 2.227]
 - 7. Separate Document for Tangible Personal Property and Digital Property [§ 2.228]
- C. Trusts [§ 2.229]

VII. Document Safekeeping [§ 2.230]

VIII. Amendment and Revocation of Wills [§ 2.231]

- A. As Compared with Other Estate Planning Documents [§ 2.232]
- B. Amendment by New Will [§ 2.233]
- C. Amendment by Codicil [§ 2.234]
- D. Amendment of Disposition of Tangible Personal Property and Digital Property [§ 2.235]
- E. Amendment by Modifying Wording [§ 2.236]
- F. Revocation by Destruction or Cancellation [§ 2.237]
- G. Revocation by Changed Circumstances [§ 2.238]
- H. Dependent Relative Revocation [§ 2.239]

IX. Amendment and Revocation of Trusts [§ 2.240]

X. Appendix [§ 2.241]

- A. Appendix 2A: Digital Property Inventory (EST-0295) [§ 2.242]

CHAPTER 3

PLANNING FOR NONPROBATE TRANSFERS

by Carl D. Holborn & Kelly M. Condon

I. Scope of Chapter [§ 3.1]

II. Nonprobate Transfers: An Overview [§ 3.2]

- A. Nature of Nonprobate Transfers [§ 3.3]
- B. Advantages and Disadvantages of Nonprobate Transfers [§ 3.4]
 - 1. Checklist [§ 3.5]
 - 2. Advantages [§ 3.6]
 - a. In General [§ 3.7]
 - b. Simplicity of Postmortem Proceedings [§ 3.8]
 - c. Initial Speed of Settlement [§ 3.9]
 - d. Privacy [§ 3.10]
 - e. Lower Postmortem Administrative Costs [§ 3.11]

- 3. Disadvantages [§ 3.12]
 - a. Limitations on Estate Tax Planning [§ 3.13]
 - b. Risks to Effective Disclaimer Planning [§ 3.14]
 - c. Outright Distributions to Beneficiaries [§ 3.15]
 - d. Lack of Coordination in Overall Estate Plan and the Administration of the Estate [§ 3.16]
 - e. Conflict Between Will and Nonprobate Transfers [§ 3.17]
 - f. Cost and Effort of Lifetime Planning [§ 3.18]
 - g. Greater Risk of Error or Financial Exploitation [§ 3.19]
- C. Coordination of Probate and Nonprobate Assets [§ 3.20]
 - 1. In General [§ 3.21]
 - 2. Tax Considerations [§ 3.22]
- D. Augmented Deferred Marital Property Estate Election [§ 3.23]

III. Survivorship Marital Property and Joint Tenancies [§ 3.24]

- A. In General [§ 3.25]
- B. Reasons to Create or Terminate Survivorship Rights [§ 3.26]
 - 1. Spouses [§ 3.27]
 - 2. Nonspouses [§ 3.28]
- C. Marital Property, Survivorship Marital Property, and Joint Tenancy Compared [§ 3.29]
- D. Joint Tenancies [§ 3.30]
 - 1. Between Spouses [§ 3.31]
 - a. Before Determination Date [§ 3.32]
 - b. After Determination Date [§ 3.33]
 - 2. Between Nonspouses [§ 3.34]
 - a. In General [§ 3.35]
 - b. Gift Consequences [§ 3.36]
 - c. Bank Accounts [§ 3.37]
- E. Survivorship Marital Property [§ 3.38]
 - 1. In General [§ 3.39]
 - 2. Management and Control Rights [§ 3.40]
 - 3. Reclassification [§ 3.41]
 - a. In General [§ 3.42]
 - b. Reclassification by Gift [§ 3.43]
 - c. Reclassification by Marital Property Agreement [§ 3.44]
- F. Bank Accounts Between Spouses [§ 3.45]
- G. Spouses' Residence [§ 3.46]
- H. Other Real Estate [§ 3.47]

IV. Retirement Plans [§ 3.48]

- A. Types of Retirement Plans [§ 3.49]
 - 1. Overview [§ 3.50]
 - 2. Checklist [§ 3.51]
 - 3. Qualified Plans [§ 3.52]
 - a. In General [§ 3.53]
 - b. Defined Benefit Plans [§ 3.54]
 - c. Defined Contribution Plans [§ 3.55]
 - (1) In General [§ 3.56]
 - (2) Types of Defined Contribution Plans [§ 3.57]
 - 4. Tax-Sheltered Annuities [§ 3.58]
 - 5. Simplified Employee Pensions [§ 3.59]
 - 6. SIMPLE Plans [§ 3.60]
 - 7. Traditional Individual Retirement Accounts [§ 3.61]
 - 8. Roth Individual Retirement Accounts [§ 3.62]

- B. Estate Planner’s Role in Evaluating Retirement Plans [§ 3.63]
 - 1. In General [§ 3.64]
 - 2. Retirement Planning [§ 3.65]
 - 3. Estate Planning [§ 3.66]
- C. Life Insurance [§ 3.67]
- D. Distributions from Retirement Plans [§ 3.68]
- E. Taxation of Retirement Plan Distributions [§ 3.69]
 - 1. Federal Income Tax [§ 3.70]
 - a. In General [§ 3.71]
 - b. Rollovers [§ 3.72]
 - 2. Wisconsin Income Tax [§ 3.73]
 - 3. Estate Taxes [§ 3.74]
- F. Beneficiary Designation [§ 3.75]
 - 1. In General [§ 3.76]
 - 2. Married Plan Participants [§ 3.77]
 - a. In General [§ 3.78]
 - b. Retirement Equity Act of 1984 [§ 3.79]
 - (1) In General [§ 3.80]
 - (2) Qualified Preretirement Survivor Annuity [§ 3.81]
 - c. Wisconsin Marital Property Act [§ 3.82]
 - 3. Unmarried Plan Participants [§ 3.83]
 - 4. Minimum Distribution Rules [§ 3.84]
 - 5. Spouse as Beneficiary [§ 3.85]
 - a. Checklist of Advantages [§ 3.86]
 - b. Avoidance of Retirement Equity Act Requirements [§ 3.87]
 - c. Minimization of Estate Taxes [§ 3.88]
 - d. Availability of Disclaimer [§ 3.89]
 - e. Maximization of Tax-Free Buildup [§ 3.90]
 - f. Rollover to IRA or Other Retirement Plan [§ 3.91]
 - 6. Marital Trust as Beneficiary [§ 3.92]
 - 7. Bypass Trust as Beneficiary [§ 3.93]
 - a. In General [§ 3.94]
 - b. Disadvantages [§ 3.95]
 - (1) Checklist [§ 3.96]
 - (2) Required Minimum Distributions [§ 3.97]
 - (3) Retirement Equity Act Requirements [§ 3.98]
 - (4) Income Taxes [§ 3.99]
 - 8. Estate as Beneficiary [§ 3.100]
 - 9. Beneficiary Designation Forms [§ 3.101]
- G. Nonqualified Plan Benefits [§ 3.102]

V. Life Insurance [§ 3.103]

- A. In General [§ 3.104]
- B. Types of Life Insurance Policies [§ 3.105]
 - 1. Term Insurance [§ 3.106]
 - 2. Whole Life Insurance [§ 3.107]
- C. Estate Planner’s Role in Planning for Life Insurance [§ 3.108]
- D. Business Insurance [§ 3.109]
 - 1. In General [§ 3.110]
 - 2. Key Employee Insurance [§ 3.111]
 - 3. Split-Dollar Insurance [§ 3.112]
- E. Beneficiary Designation [§ 3.113]
 - 1. In General [§ 3.114]
 - 2. Married Persons [§ 3.115]
 - a. Wisconsin Marital Property Act [§ 3.116]

- b. Form: Written Consent to Life Insurance Beneficiary Designation (EST-0004) [§ 3.117]
 - c. Form: Written Consent to Use of Property to Pay Premiums (EST-0005) [§ 3.118]
 - 3. Unmarried Persons [§ 3.119]
 - 4. Minors as Beneficiaries [§ 3.120]
 - 5. Estate as Beneficiary [§ 3.121]
 - 6. Trust as Beneficiary [§ 3.122]
 - 7. Beneficiary Designation Forms [§ 3.123]
 - a. Insurance Company Forms [§ 3.124]
 - b. Recording Beneficiary Designation Forms [§ 3.125]
- F. Use of Life Insurance to Minimize Estate Taxes [§ 3.126]

VI. Other Nonprobate Transfers [§ 3.127]

- A. Payable-on-Death Accounts [§ 3.128]
- B. Registration of Securities in Beneficiary Form [§ 3.129]
- C. Life Estates [§ 3.130]
- D. Powers of Appointment [§ 3.131]
- E. Will-Substitute Agreements [§ 3.132]
- F. Transfer-on-Death Designations [§ 3.133]

VII. Appendix [§ 3.134]

- A. Appendix 3A: Designation of T.O.D. Beneficiary (EST-0101) [§ 3.135]

CHAPTER 4

DRAFTING A WILL WITHOUT A TRUST

by Daniel J. Glass

I. Scope of Chapter [§ 4.1]

II. Basic Will Without a Trust (EST-0007) [§ 4.2]

III. Annotated Form: Basic Will Without a Trust [§ 4.3]

- A. Caption of Will [§ 4.4]
- B. Introductory Clause [§ 4.5]
 - 1. Provision (EST-0296) [§ 4.6]
 - 2. Purpose [§ 4.7]
 - a. Identification of Testator [§ 4.8]
 - b. Revocation of Prior Wills and Codicils [§ 4.9]
 - c. Identification of Beneficiaries [§ 4.10]
 - 3. Alternative Provision: Identification of Testator by Various Names [§ 4.11]
 - a. Provision (EST-0008) [§ 4.12]
 - b. Purpose [§ 4.13]
- C. Nomination of Guardian [§ 4.14]
 - 1. Provision (EST-0009) [§ 4.15]
 - 2. Purpose (EST-0297) [§ 4.16]
- D. Nomination of Personal Representative [§ 4.17]
 - 1. Provision (EST-0298) [§ 4.18]
 - 2. Purpose [§ 4.19]
 - 3. Spouse [§ 4.20]
 - 4. Child [§ 4.21]
 - 5. Outsider [§ 4.22]
 - 6. Nonresident [§ 4.23]
 - 7. Minor [§ 4.24]

- 8. Successor [§ 4.25]
- 9. Co-Personal Representatives [§ 4.26]
- E. Bond [§ 4.27]
 - 1. Provision (EST-0299) [§ 4.28]
 - 2. Guardian [§ 4.29]
 - 3. Personal Representative [§ 4.30]
- F. Tangible Personal Property and Digital Property [§ 4.31]
 - 1. Provision (EST-0300) [§ 4.32]
 - 2. Reference to Another Document [§ 4.33]
 - 3. When to Include Provision [§ 4.34]
 - 4. Form for Use by Testator [§ 4.35]
- G. Entire Estate to Spouse [§ 4.36]
 - 1. Provision (EST-0301) [§ 4.37]
 - 2. After-Acquired Property [§ 4.38]
 - 3. Exercise of Power of Appointment [§ 4.39]
 - 4. After-Born or Forgotten Children [§ 4.40]
 - 5. Alternative Provision: Entire Estate to Spouse [§ 4.41]
 - a. Provision (EST-0010) [§ 4.42]
 - b. Purpose [§ 4.43]
- H. If Spouse Predeceases Testator, All to Children [§ 4.44]
 - 1. Provision (EST-0302) [§ 4.45]
 - 2. Purpose [§ 4.46]
 - 3. Alternative Provision: All to Children and Lineal Descendants [§ 4.47]
 - a. Provision (EST-0011) [§ 4.48]
 - b. Purpose [§ 4.49]
- I. Descendants of Deceased Child Take by Right of Representation [§ 4.50]
 - 1. Provision (EST-0012) [§ 4.51]
 - 2. Purpose [§ 4.52]
 - 3. Alternative Provision: Per Capita Distribution [§ 4.53]
 - a. Provision (EST-0303) [§ 4.54]
 - b. Purpose [§ 4.55]
- J. Ultimate Beneficiaries: Heirs of Both Spouses [§ 4.56]
 - 1. Provision (EST-0304) [§ 4.57]
 - 2. Purpose [§ 4.58]
- K. Disposition If Beneficiary Dies Shortly After Testator [§ 4.59]
 - 1. Provision (EST-0305) [§ 4.60]
 - 2. Purpose [§ 4.61]
 - 3. Effect of Provision [§ 4.62]
 - 4. Marital Deduction [§ 4.63]
 - 5. Federal Estate Tax [§ 4.64]
 - 6. Statutory Requirement of Survival by 120 Hours [§ 4.65]
- L. Date and Place of Will's Execution [§ 4.66]
 - 1. Provision (EST-0306) [§ 4.67]
 - 2. Purpose [§ 4.68]
- M. Signature Line [§ 4.69]
- N. Attestation Clause [§ 4.70]
 - 1. Provision (EST-0307) [§ 4.71]
 - 2. Purpose [§ 4.72]
 - 3. Citation of Pages [§ 4.73]
 - 4. Signatures or Initials on Each Page [§ 4.74]
 - 5. Statements Regarding Competence and Voluntariness [§ 4.75]
 - 6. Acknowledgment [§ 4.76]
 - 7. Publication [§ 4.77]
 - 8. Number of Witnesses [§ 4.78]

- O. Alternative Attestation Clause: Signing by Proxy [§ 4.79]
 - 1. Provision (EST-0013) [§ 4.80]
 - 2. Purpose [§ 4.81]
- P. Alternative Attestation Clause: Signing by Testator’s Mark [§ 4.82]
 - 1. Provision (EST-0014) [§ 4.83]
 - 2. Purpose [§ 4.84]
 - 3. Electronic Signatures [§ 4.85]
- Q. One-Step Procedure for Self-Proved Will [§ 4.86]
 - 1. Purpose [§ 4.87]
 - 2. Provision (EST-0015) [§ 4.88]
- R. Two-Step Procedure for Self-Proved Will [§ 4.89]
 - 1. Purpose [§ 4.90]
 - 2. Provision (EST-0016) [§ 4.91]

IV. Provisions for Special Situations [§ 4.92]

- A. Expenses of Last Illness and Funeral [§ 4.93]
 - 1. Provision (EST-0017) [§ 4.94]
 - 2. Purpose [§ 4.95]
- B. Designation of Attorney [§ 4.96]
 - 1. Enforceability of Provisions [§ 4.97]
 - 2. Ethical Considerations [§ 4.98]
- C. Payment of Debts, Taxes, and Expenses [§ 4.99]
 - 1. Provision (EST-0018) [§ 4.100]
 - 2. Purpose [§ 4.101]
 - a. Payment of Debts [§ 4.102]
 - b. Payment of Taxes [§ 4.103]
- D. Gift of Encumbered Property [§ 4.104]
 - 1. Exoneration [§ 4.105]
 - a. Provision (EST-0019) [§ 4.106]
 - b. Purpose [§ 4.107]
 - 2. Subrogation [§ 4.108]
 - a. Provision (EST-0020) [§ 4.109]
 - b. Purpose [§ 4.110]
- E. Nonademption of Specific Gifts [§ 4.111]
 - 1. Provision (EST-0021) [§ 4.112]
 - 2. Purpose [§ 4.113]
- F. Options to Purchase [§ 4.114]
 - 1. In General [§ 4.115]
 - 2. Provision 1: At Appraised Value for Cash (EST-0022) [§ 4.116]
 - 3. Provision 2: At Appraised Value on Terms (EST-0023) [§ 4.117]
 - 4. Provision 3: At Fixed Value for Cash (EST-0024) [§ 4.118]
 - 5. Establishing Sale Price [§ 4.119]
 - a. Tax or Inventory Value [§ 4.120]
 - b. Separate Appraisal [§ 4.121]
 - c. Fixed Value [§ 4.122]
 - d. Percentage of Market Value [§ 4.123]
 - 6. Establishing Interest Rate [§ 4.124]
- G. Specific Powers for Personal Representative [§ 4.125]
 - 1. In General [§ 4.126]
 - 2. Sell, Lease, or Mortgage Property and Borrow Money [§ 4.127]
 - a. Provision (EST-0025) [§ 4.128]
 - b. Purpose [§ 4.129]
 - 3. Permit Beneficiaries to Use Property [§ 4.130]
 - a. Provision (EST-0026) [§ 4.131]
 - b. Purpose [§ 4.132]

- 4. Settle Claims [§ 4.133]
 - a. Provision (EST-0027) [§ 4.134]
 - b. Purpose [§ 4.135]
- 5. Leave Assets Invested in Form Received [§ 4.136]
 - a. Provision (EST-0028) [§ 4.137]
 - b. Purpose [§ 4.138]
- 6. Continue Business [§ 4.139]
 - a. Sample Provision (EST-0029) [§ 4.140]
 - b. Purpose [§ 4.141]
 - c. Statutory Protection [§ 4.142]
- 7. Administer Marital Property [§ 4.143]
 - a. Provision (EST-0030) [§ 4.144]
 - b. Purpose [§ 4.145]
- 8. Digital Property [§ 4.146]
 - a. Provision (EST-0294) [§ 4.147]
 - b. Purpose [§ 4.148]
- H. Gift of Life Estate [§ 4.149]
 - 1. Sample Provision (EST-0031) [§ 4.150]
 - 2. Purpose [§ 4.151]
 - a. Pass Remainder Interest to Children [§ 4.152]
 - b. Minimize Disputes with Remainder Beneficiaries [§ 4.153]
 - 3. Power to Sell or Borrow [§ 4.154]
 - 4. Termination Upon Remarriage [§ 4.155]
 - 5. Personal Property [§ 4.156]
- I. Gift of Remainder Interest [§ 4.157]
 - 1. Sample Provision (EST-0032) [§ 4.158]
 - 2. Purpose [§ 4.159]
- J. Gift for Educational, Religious, Charitable, and Public Uses [§ 4.160]
 - 1. Sample Provision (EST-0033) [§ 4.161]
 - 2. Purpose [§ 4.162]
- K. Specific Bequest Limited to Fraction of Estate [§ 4.163]
 - 1. Sample Provision (EST-0034) [§ 4.164]
 - 2. Purpose [§ 4.165]
- L. Anatomical Gifts [§ 4.166]
 - 1. Sample Provision (EST-0035) [§ 4.167]
 - 2. Statutory Authority [§ 4.168]
 - 3. Who May Make Gift [§ 4.169]
 - a. Who May Make Anatomical Gift Before Donor's Death [§ 4.170]
 - b. Who May Make an Anatomical Gift Near or at the Time of Death [§ 4.171]
 - 4. Who May Become Donee [§ 4.172]
 - 5. Alternative Methods of Making Gifts [§ 4.173]
 - a. Document Other Than Will [§ 4.174]
 - b. Oral Communication [§ 4.175]
 - c. Driver's License or Identification Card [§ 4.176]
 - d. Health-Care Agent/Power of Attorney for Health Care [§ 4.177]
 - 6. Amendment or Revocation [§ 4.178]
 - a. Amending an Anatomical Gift Before Death [§ 4.179]
 - b. Revocation of Anatomical Gift Before Donor's Death [§ 4.180]
 - c. Amending or Revoking an Anatomical Gift Near or Upon Donor's Death [§ 4.181]
 - 7. Refusal to Make Anatomical Gift [§ 4.182]
 - 8. Amendment or Revocation of Refusal [§ 4.183]
- M. Compensation of Personal Representative [§ 4.184]
 - 1. Provision (EST-0036) [§ 4.185]
 - 2. Statutory Compensation [§ 4.186]
 - a. Expenses [§ 4.187]

- b. Services [§ 4.188]
 - c. Services When Attorney Acts as Personal Representative [§ 4.189]
 - 3. Compensation as Provided in Will [§ 4.190]
 - 4. Federal Estate Tax [§ 4.191]
 - 5. Federal Income Tax [§ 4.192]
- V. Very Short Will [§ 4.193]**
 - A. Form: Very Short Will (EST-0037) [§ 4.194]
 - B. Uses and Pitfalls [§ 4.195]
- VI. Wisconsin Statutory Basic Will [§ 4.196]**
 - A. Statutory Authority [§ 4.197]
 - B. Purpose [§ 4.198]
 - C. Execution [§ 4.199]
- VII. Appendices [§ 4.200]**
 - A. Appendix 4A: Document Disposing of Tangible Personal Property and Digital Property (Individual Person) (EST-0102) [§ 4.201]
 - B. Appendix 4B: Document Disposing of Tangible Personal Property and Digital Property (Married Person) (EST-0103) [§ 4.202]

CHAPTER 5

DRAFTING A WILL WITH TRUST PROVISIONS

by Caitlyn B. Sikorski

- I. Scope of Chapter [§ 5.1]**
- II. Nature and Purpose of Testamentary Trust [§ 5.2]**
- III. Planning for Children [§ 5.3]**
 - A. Family Situation [§ 5.4]
 - 1. In General [§ 5.5]
 - 2. Children from One Marriage [§ 5.6]
 - 3. Children from Prior Marriages [§ 5.7]
 - 4. Large Age Differences Between Children [§ 5.8]
 - B. After-Born and After-Adopted Children [§ 5.9]
 - C. Support During Childhood [§ 5.10]
 - 1. In General [§ 5.11]
 - 2. Broad Trustee Authority [§ 5.12]
 - 3. Distributions Benefiting Minor Children [§ 5.13]
 - D. Educational Expenses [§ 5.14]
 - 1. In General [§ 5.15]
 - 2. Coordination with Children's Support Needs [§ 5.16]
 - 3. Types of Educational Expenses [§ 5.17]
 - 4. Children with Different Abilities or Goals [§ 5.18]
 - E. Single Trust for All Children [§ 5.19]
 - F. Separate Trusts for Children [§ 5.20]
 - 1. Division of Single Trust [§ 5.21]
 - 2. Beneficial Provisions [§ 5.22]
 - 3. Duration [§ 5.23]
 - 4. Tax Considerations [§ 5.24]
 - G. Separate Trusts for Deceased Children's Issue [§ 5.25]
 - 1. In General [§ 5.26]
 - 2. Predeceased Children [§ 5.27]

- 3. Death of Child Before Trust Terminates [§ 5.28]
- H. Children with Special Needs [§ 5.29]
- I. Guardians for Minor Children [§ 5.30]
- J. Marital Property Considerations [§ 5.31]

- IV. Planning for Parents [§ 5.32]**
 - A. In General [§ 5.33]
 - B. Contingent Provision for Parents [§ 5.34]
 - C. Parents as Discretionary Beneficiaries of Children’s Trusts [§ 5.35]
 - D. Separate Trust for Parents [§ 5.36]
 - E. Coordination of Spouses’ Plans [§ 5.37]

- V. Trustee Selection [§ 5.38]**
 - A. In General [§ 5.39]
 - B. Corporate vs. Individual Trustees [§ 5.40]
 - 1. In General [§ 5.41]
 - 2. Individual Trustees [§ 5.42]
 - 3. Corporate Trustees [§ 5.43]
 - 4. Individual and Corporate Cotrustees [§ 5.44]
 - C. Beneficiary/Trustees [§ 5.45]
 - D. Trustee Succession and Removal [§ 5.46]
 - 1. In General [§ 5.47]
 - 2. Corporate Trustees [§ 5.48]
 - 3. Individual Trustees [§ 5.49]
 - E. Trustee Powers [§ 5.50]
 - F. Directing Parties and Trust Protectors [§ 5.51]

- VI. Transferring Assets to Trustee [§ 5.52]**
 - A. Testamentary Gifts [§ 5.53]
 - B. Life Insurance Beneficiary Designations [§ 5.54]
 - C. Employee Benefit Plans and Individual Retirement Arrangements [§ 5.55]
 - D. Tangible Personal Property and Digital Property [§ 5.56]

- VII. Forms of Wills with Trust Provisions [§ 5.57]**
 - A. Introduction [§ 5.58]
 - 1. Basic Format and Notations [§ 5.59]
 - 2. Short Form vs. Long Form [§ 5.60]
 - 3. Distribution Standard [§ 5.61]
 - 4. Limitations on Use of Forms [§ 5.62]
 - B. Short Form: Will with Single Testamentary Trust (EST-0038) [§ 5.63]
 - 1. Caption [§ 5.64]
 - 2. Introductory Clause [§ 5.65]
 - 3. Specific Gifts [§ 5.66]
 - a. In General [§ 5.67]
 - b. Tangible Personal Property and Digital Property [§ 5.68]
 - c. Residence [§ 5.69]
 - d. Cash Gifts [§ 5.70]
 - 4. Residuary Clause [§ 5.71]
 - a. All Outright to Spouse [§ 5.72]
 - b. Alternatively to Testamentary Family Trust [§ 5.73]
 - c. Failure of Residuary Beneficiaries [§ 5.74]
 - 5. Family Trust [§ 5.75]
 - a. In General [§ 5.76]
 - b. Trust Purpose [§ 5.77]
 - c. Income and Principal Distributions [§ 5.78]

- d. Division and Distribution [§ 5.79]
- e. Facility-of-Payments Clause [§ 5.80]
- f. Failure-of-Beneficiaries Clause [§ 5.81]
- g. Spendthrift Clause [§ 5.82]
- h. Distributions to Guardians [§ 5.83]
- i. Merger Authorization [§ 5.84]
- 6. Claims, Expenses, and Taxes Clause [§ 5.85]
- 7. Fiduciary Powers Clause [§ 5.86]
- 8. Personal Representative and Trustee Appointment Clause [§ 5.87]
- 9. Guardian Appointment Clause [§ 5.88]
- 10. Definitions Clause [§ 5.89]
- 11. Declaration and Signature with Simple Non-Self-Proving Attestation Clause [§ 5.90]
- 12. Self-Proving Date, Signature, and Acknowledgment Clause [§ 5.91]
- C. Long Form: Will with Multiple Separate Testamentary Trusts (EST-0039) [§ 5.92]
 - 1. Caption [§ 5.93]
 - 2. Introductory Clause [§ 5.94]
 - 3. Specific Gifts [§ 5.95]
 - a. Tangible Personal Property and Digital Property [§ 5.96]
 - b. Residence [§ 5.97]
 - c. Cash Gifts [§ 5.98]
 - 4. Residuary Clause [§ 5.99]
 - a. All Outright to Spouse [§ 5.100]
 - b. Alternatively to Testamentary Family Trust [§ 5.101]
 - c. Failure of Residuary Beneficiaries [§ 5.102]
 - 5. Family Trust [§ 5.103]
 - a. In General [§ 5.104]
 - b. Trust Purposes [§ 5.105]
 - c. Income and Principal Distributions [§ 5.106]
 - d. Division into Shares [§ 5.107]
 - e. Separate Trusts for Children [§ 5.108]
 - f. Separate Trusts for Deceased Children’s Issue [§ 5.109]
 - g. Trust for Parents [§ 5.110]
 - h. Facility-of-Payments Clause [§ 5.111]
 - i. Failure-of-Beneficiaries Clause [§ 5.112]
 - j. Spendthrift Clause [§ 5.113]
 - k. Distributions to Guardians [§ 5.114]
 - l. Merger Authorization [§ 5.115]
 - 6. Claims, Expenses, and Taxes Clause [§ 5.116]
 - 7. Fiduciary Powers Clause [§ 5.117]
 - 8. Personal Representative and Trustee Appointment Clause [§ 5.118]
 - 9. Guardian Appointment Clause [§ 5.119]
 - 10. Definitions Clause [§ 5.120]
 - 11. Declaration and Signature with Simple Attestation Clause [§ 5.121]
 - 12. Self-Proving Date, Signature, and Acknowledgment Clause [§ 5.122]

VIII. Alternatives to Traditional Testamentary Trust [§ 5.123]

- A. In General [§ 5.124]
- B. Custodianship Transfers [§ 5.125]
- C. Life Insurance Policy Settlement Options [§ 5.126]
- D. Bank Account Arrangements and Joint Tenancies [§ 5.127]
- E. Lifetime Gifts [§ 5.128]
- F. Living Trusts [§ 5.129]
- G. Gifts to Preexisting Trusts [§ 5.130]
- H. Wisconsin Statutory Basic Will with Trust [§ 5.131]

CHAPTER 6

DRAFTING WHEN DEATH TAXES ARE INVOLVED

by William R. Hughes & Wendy S. Rusch

I. Scope of Chapter [§ 6.1]

II. Federal Estate Taxes: An Overview [§ 6.2]

- A. In General [§ 6.3]
- B. Applicable Exclusion Amount [§ 6.4]
 - 1. In General [§ 6.5]
 - 2. Applies Against Estate and Gift Tax [§ 6.6]
 - 3. Available to Each Spouse [§ 6.7]
 - 4. Exempts Smaller Estates [§ 6.8]
 - 5. Planning Technique for Larger Estates [§ 6.9]
- C. Unlimited Marital Deduction [§ 6.10]
- D. Coordination of Marital Deduction and Applicable Exclusion Amount [§ 6.11]
- E. Federal Estate Tax Rates [§ 6.12]
- F. Federal Estate Tax Base [§ 6.13]
 - 1. In General [§ 6.14]
 - 2. Assets Included in Gross Estate [§ 6.15]
 - a. In General [§ 6.16]
 - b. Gifts Made Within Three Years of Death [§ 6.17]
 - c. Transfers with a Retained Life Estate [§ 6.18]
 - d. Annuities [§ 6.19]
 - e. Joint Tenancy Interests [§ 6.20]
 - f. Proceeds of Life Insurance [§ 6.21]
 - 3. Adjusted Taxable Gifts [§ 6.22]
 - 4. Valuation of Assets [§ 6.23]
 - a. In General [§ 6.24]
 - b. Alternate Valuation Date [§ 6.25]
- G. Other Credits and Deductions [§ 6.26]
 - 1. In General [§ 6.27]
 - 2. Credit for Taxes on Pre-1977 Gifts [§ 6.28]
 - 3. Credit for Estate Tax on Prior Transfers to Decedent [§ 6.29]
 - 4. Credit for Foreign Death Taxes [§ 6.30]
 - 5. Deduction for State Death Taxes [§ 6.31]
 - 6. Deduction for Expenses and Indebtedness [§ 6.32]
 - 7. Deduction for Casualty and Theft Losses [§ 6.33]
 - 8. Charitable Deduction [§ 6.34]

III. Applicable Exclusion Amount [§ 6.35]

- A. When to Plan with Applicable Exclusion Amount [§ 6.36]
 - 1. Combined Estates Exceed \$11.18 Million in 2018 or \$11.4 Million in 2019 [§ 6.37]
 - 2. Estate Increasing in Value [§ 6.38]
- B. Applicable Exclusion Planning Techniques [§ 6.39]
 - 1. Bypass Trust [§ 6.40]
 - 2. Use of Marital Deduction [§ 6.41]
 - 3. Increasing Nonpropertyed Spouse's Estate [§ 6.42]
 - a. In General [§ 6.43]
 - b. Methods [§ 6.44]
 - (1) Transfer Outright to Spouse [§ 6.45]
 - (2) Transfer to Lifetime Trust [§ 6.46]
 - c. Effect of Marital Property Law [§ 6.47]
 - d. Deferred Marital Property [§ 6.48]
- C. Underfunding of Applicable Exclusion Bequest [§ 6.49]

- D. Importance of Wills [§ 6.50]
- E. Amount of Applicable Exclusion Bequest [§ 6.51]
- F. Disclaimer as Alternative [§ 6.52]

IV. Marital Deduction [§ 6.53]

- A. Qualification Requirements [§ 6.54]
 - 1. In General [§ 6.55]
 - 2. Spouse Must Survive [§ 6.56]
 - a. Marital Status [§ 6.57]
 - b. Competence [§ 6.58]
 - c. Survivorship [§ 6.59]
 - 3. Property Interest Must Pass from Decedent to Spouse [§ 6.60]
 - a. In General [§ 6.61]
 - b. Marital Property [§ 6.62]
 - c. Joint Tenancy Property or Survivorship Marital Property [§ 6.63]
 - d. Property Interests Subject to Power of Appointment [§ 6.64]
 - e. Augmented Deferred Marital Property [§ 6.65]
 - f. Life Insurance Proceeds [§ 6.66]
 - g. Property Interests Passing by Transfer, Will, or Inheritance [§ 6.67]
 - h. Annuities [§ 6.68]
 - i. Interests in Trust [§ 6.69]
 - j. Property Interests Passing as a Result of Disclaimers [§ 6.70]
 - (1) In General [§ 6.71]
 - (2) Use of Disclaimer to Decrease Marital Deduction [§ 6.72]
 - (3) Use of Disclaimer to Increase Marital Deduction [§ 6.73]
 - k. Property Interests Passing as a Result of Will Contests [§ 6.74]
 - l. Allowances for Support During Probate [§ 6.75]
 - m. Remainder Interests [§ 6.76]
 - 4. Property Interest Must Be a Deductible Interest [§ 6.77]
 - a. In General [§ 6.78]
 - b. Includible in Gross Estate [§ 6.79]
 - c. Not Deductible as Expense or Indebtedness [§ 6.80]
 - d. Not Deductible as Loss [§ 6.81]
 - e. Not a Nondeductible Terminable Interest [§ 6.82]
 - (1) In General [§ 6.83]
 - (2) Nondeductible Terminable Interests [§ 6.84]
 - (3) Interests in Unidentified Assets [§ 6.85]
 - (4) Application of Terminable Interest Rule [§ 6.86]
 - (5) Exceptions to Terminable Interest Rule [§ 6.87]
 - 5. Spouse Must Be Citizen [§ 6.88]
- B. Arrangements Not Qualifying for Marital Deduction [§ 6.89]
 - 1. In General [§ 6.90]
 - 2. To Spouse for Life, Remainder to Children [§ 6.91]
 - 3. To Spouse, But If Spouse Dies Within Seven Months, to Child [§ 6.92]
 - 4. Annuity to Spouse Designating Beneficiary upon Spouse's Death [§ 6.93]
 - 5. To Spouse, But Spouse Bound by Contract to Transfer Assets [§ 6.94]
- C. Arrangements Qualifying for Marital Deduction [§ 6.95]
 - 1. In General [§ 6.96]
 - 2. Transfer in Fee [§ 6.97]
 - a. In General [§ 6.98]
 - b. Disadvantages of Transfer in Fee [§ 6.99]
 - c. Transfer of Less Than a Fee [§ 6.100]
 - 3. Survivorship and Joint Tenancy Property [§ 6.101]
 - a. In General [§ 6.102]
 - b. Probate Avoidance [§ 6.103]

- c. Basis Adjustment Consideration [§ 6.104]
 - 4. Life Estate with Power of Appointment [§ 6.105]
 - a. In General [§ 6.106]
 - b. Variations That Qualify [§ 6.107]
 - c. Comparison with Transfer in Fee [§ 6.108]
 - d. Nondeductible Assets [§ 6.109]
 - 5. Power-of-Appointment Trust [§ 6.110]
 - a. In General [§ 6.111]
 - b. Statutory Requirements [§ 6.112]
 - c. Gift of Remainder [§ 6.113]
 - d. Availability of All Assets for Family Support [§ 6.114]
 - e. Unproductive Property [§ 6.115]
 - f. Assets of Increasing Value [§ 6.116]
 - g. Trustee Selection [§ 6.117]
 - 6. Estate Trust [§ 6.118]
 - a. In General [§ 6.119]
 - b. Principal Taxed in Spouse's Estate [§ 6.120]
 - c. Income Paid to Third Person [§ 6.121]
 - 7. Qualified Terminable Interest Property [§ 6.122]
 - a. In General [§ 6.123]
 - b. The "Passing" Requirement [§ 6.124]
 - c. Qualifying Income Interest for Life [§ 6.125]
 - d. QTIP Election [§ 6.126]
 - e. QTIP Trusts [§ 6.127]
 - f. Inclusion in Surviving Spouse's Estate [§ 6.128]
 - 8. Life Insurance and Employment Benefit Settlements [§ 6.129]
 - a. In General [§ 6.130]
 - b. Lump-Sum Payment to Spouse [§ 6.131]
 - c. Payment to Spouse or Spouse's Estate [§ 6.132]
 - d. Payment to Trustee [§ 6.133]
 - e. Other Deferred Payment Settlements [§ 6.134]
- D. Amount of Marital Deduction Disposition [§ 6.135]

- V. Wisconsin Estate Tax [§ 6.136]**
- A. In General [§ 6.137]
- B. Computation [§ 6.138]
- VI. Allocation Alternatives [§ 6.139]**
- A. In General [§ 6.140]
- B. A Sampling of Allocation Alternatives [§ 6.141]
 - 1. Traditional Optimal Marital Deduction Plan [§ 6.142]
 - 2. Wisconsin Optimal Marital Deduction Plan [§ 6.143]
 - 3. Disclaimer Plan [§ 6.144]
 - 4. Divisible QTIP Trust Plan [§ 6.145]
 - 5. Clayton QTIP Trust Plan [§ 6.146]
 - 6. Table Summarizing Allocation Alternatives [§ 6.147]
- C. Formula Allocations [§ 6.148]
 - 1. Types of Formula Allocations [§ 6.149]
 - 2. Factors to Consider in Selecting a Type of Formula [§ 6.150]
 - a. Ease of Administration [§ 6.151]
 - b. Postmortem Gains and Losses [§ 6.152]
 - c. Income Tax Consequences of In-Kind Distributions [§ 6.153]
 - d. Carrying out Income [§ 6.154]
 - e. Time of Funding [§ 6.155]

VII. GST Tax [§ 6.156]

- A. In General [§ 6.157]
- B. Taxation of Generation-Skipping Transfers [§ 6.158]
- C. GST Exemption [§ 6.159]
- D. Tax Rates [§ 6.160]
- E. GST Tax Planning for Larger Estates [§ 6.161]

CHAPTER 7

USING REVOCABLE TRUSTS

by Sheila Boothby Stevens

I. Scope of Chapter [§ 7.1]

II. General Revocable Trust Concepts [§ 7.2]

- A. What Is a Revocable Trust? [§ 7.3]
- B. Funded and Unfunded Revocable Trusts [§ 7.4]
- C. The “Main Vehicle” Concept [§ 7.5]
- D. Reasons to Use Revocable Trust Estate Plan [§ 7.6]
 - 1. Provides Investment Management and Recordkeeping Assistance [§ 7.7]
 - 2. Avoids a Probate Proceeding at Settlor’s Death [§ 7.8]
 - a. In General [§ 7.9]
 - b. Allows for Greater Confidentiality [§ 7.10]
 - c. Provides Continuity of Management Before and After Settlor’s Death [§ 7.11]
 - 3. Provides for Property Management upon Incapacity [§ 7.12]
 - 4. Maintains Assets’ Individual or Marital Property Character [§ 7.13]
 - 5. Allows for Coordinated Management of Spouses’ Property [§ 7.14]
 - 6. Provides for Management of Property in More Than One Jurisdiction [§ 7.15]
- E. Revocable Trust Has Few Tax Effects During Settlor’s Lifetime [§ 7.16]
 - 1. In General [§ 7.17]
 - 2. Income Tax [§ 7.18]
 - 3. Estate Tax [§ 7.19]
 - 4. Gift Tax [§ 7.20]
 - a. In General [§ 7.21]
 - b. Gifts from Trust Within Three Years of Death [§ 7.22]
- F. Disadvantages of Revocable Trust Estate Plan [§ 7.23]
 - 1. Requires Administrative Formalities [§ 7.24]
 - 2. Increased Costs of Revocable Trust Plan [§ 7.25]
 - 3. Tax Considerations [§ 7.26]
 - 4. Pour-Over Will Necessary [§ 7.27]
- G. Summary Table [§ 7.28]

III. Explaining Revocable Trusts to Clients [§ 7.29]

- A. Office Conference [§ 7.30]
- B. Diagrams of Revocable Trust Estate Plans [§ 7.31]

IV. Effect of Marital Property [§ 7.32]

- A. In General [§ 7.33]
- B. Joint Revocable Trust or Separate Trusts for Married Settlers [§ 7.34]
- C. Marital Property Agreement (EST-0040) [§ 7.35]
 - 1. In General [§ 7.36]
 - 2. Form: Petition to Confirm Interest in Property (EST-0041) [§ 7.37]
 - 3. Form: Certificate Confirming Interest in Property (EST-0042) [§ 7.38]
 - 4. Form: Transmittal Letter to Court (EST-0043) [§ 7.39]
- D. Tax-Free Exchange of Marital Property [§ 7.40]

V. Planning the Trust [§ 7.41]

- A. Selecting the Trustee [§ 7.42]
 - 1. In General [§ 7.43]
 - 2. Beneficially Interested Trustees [§ 7.44]
 - a. In General [§ 7.45]
 - b. Potential Tax Consequences of Beneficially Interested Trustees [§ 7.46]
 - c. Form Language: Appointment of Special Cotrustee (EST-0044) [§ 7.47]
 - 3. Reference Sources [§ 7.48]
- B. Power to Revoke or Amend [§ 7.49]
 - 1. In General [§ 7.50]
 - 2. Joint Revocable Trust Designed to Hold Marital Property [§ 7.51]
- C. The Original Trust at Death of Settlor [§ 7.52]
 - 1. Continuation or Division of Original Trust upon Settlor's Death [§ 7.53]
 - 2. Creation of New, Separate Trusts upon Settlor's Death [§ 7.54]
 - 3. Protection of Survivor's Trust Income Requirement [§ 7.55]
 - 4. Protection of Alternate Valuation Date Election [§ 7.56]
 - a. Effect of Dividing Original Trust upon Settlor's Death [§ 7.57]
 - b. Effect of Distributing Surviving Spouse's Marital Property Interest [§ 7.58]
 - c. Avoiding Premature Distribution [§ 7.59]
- D. Dispositive Provisions [§ 7.60]
 - 1. Disposition of Assets During Settlor's Lifetime [§ 7.61]
 - 2. Disposition of Assets upon Settlor's Death [§ 7.62]
 - 3. Surviving Spouse's Property [§ 7.63]
 - 4. Tax-Free Exchange of Marital Property [§ 7.64]
 - 5. Distributions from Survivor's Trust [§ 7.65]
 - 6. Distributions from Family Trust [§ 7.66]
 - 7. Payment of Debts, Expenses, and Taxes [§ 7.67]
 - 8. Generation-Skipping Transfers [§ 7.68]
- E. Administrative Provisions [§ 7.69]

VI. Implementing and Funding the Trust [§ 7.70]

- A. Considerations on Transferring Assets to Trust During Lifetime [§ 7.71]
 - 1. Consequences of Funding During Settlor's Lifetime [§ 7.72]
 - 2. Objections to Funding [§ 7.73]
 - 3. Minimum Corpus [§ 7.74]
- B. Specific Types of Assets to Fund Revocable Trust [§ 7.75]
 - 1. Real Property (EST-0045) [§ 7.76]
 - 2. Untitled Tangible Personal Property (EST-0046) [§ 7.77]
 - 3. Digital Property [§ 7.78]
 - 4. Publicly Traded Securities and Brokerage Accounts (EST-0047) [§ 7.79]
 - 5. Bonds (EST-0048) [§ 7.80]
 - 6. Closely Held Stock [§ 7.81]
 - a. General [§ 7.82]
 - b. S Corporation Stock [§ 7.83]
 - (1) Eligibility of Revocable Trust as Shareholder [§ 7.84]
 - (2) Eligibility of Other Trusts as Shareholder [§ 7.85]
 - (3) Requirements for QSST [§ 7.86]
 - (4) Direction to Trustee to Create QSST [§ 7.87]
 - (5) Requirements for ESBT [§ 7.88]
 - (6) Family Limited Partnerships and Limited Liability Companies [§ 7.89]
 - (7) Installment Obligations [§ 7.90]
 - (8) Waiver-of-Attribution Stock [§ 7.91]
 - 7. Agreement to Transfer Property Without Probate (EST-0049) [§ 7.92]

- C. Unsuitable Property [§ 7.93]
 - 1. Stock Qualifying for Benefits Under I.R.C. § 1244 [§ 7.94]
 - 2. Incentive Stock Options [§ 7.95]
 - 3. Service Corporation Stock [§ 7.96]
- D. Funding Revocable Trust by Durable Power of Attorney for Finances and Property (EST-0050) [§ 7.97]
- E. Pour-Over Will [§ 7.98]
- F. Marital Property Agreement Confirmation [§ 7.99]
- G. Beneficiary Designations [§ 7.100]
 - 1. In General [§ 7.101]
 - 2. Life Insurance Proceeds [§ 7.102]
 - 3. Retirement Benefits [§ 7.103]
 - a. Spouse or Trust as Beneficiary for Married Person [§ 7.104]
 - b. Retirement Plan Benefits Payable to Trust [§ 7.105]
 - c. Distributions to “Conduit” Trust Beneficiary [§ 7.106]
 - d. Treatment as Separate Accounts [§ 7.107]
- H. Declaration of Trust Ownership [§ 7.108]
 - 1. Introduction [§ 7.109]
 - 2. Form (EST-0051) [§ 7.110]

VII. Income Tax Considerations [§ 7.111]

- A. Income Tax Considerations During Settlor’s Lifetime [§ 7.112]
 - 1. Grantor Trust Rules [§ 7.113]
 - 2. Separate Trust Income Tax Reporting [§ 7.114]
 - a. In General [§ 7.115]
 - b. Separate Taxpayer Identification Number [§ 7.116]
 - c. Form: Certification of Trust (EST-0052) [§ 7.117]
 - 3. Exclusion of Gain on Sale of Principal Residence [§ 7.118]
 - 4. Wisconsin Miscellaneous Tax Issues [§ 7.119]
 - a. Homestead Tax Credit [§ 7.120]
 - b. Farmland Preservation Tax Law [§ 7.121]
 - c. Managed Forest Land and Forest Croplands Laws [§ 7.122]
- B. Income Tax Considerations After Settlor’s Death [§ 7.123]
 - 1. Adjustment in Asset’s Income Tax Basis [§ 7.124]
 - 2. Income Tax Differences Between a Revocable Trust and a Probate Estate at Settlor’s Death [§ 7.125]
 - a. In General [§ 7.126]
 - b. Separate Taxpayer Status [§ 7.127]
 - c. Income Tax Exemption [§ 7.128]
 - d. Distribution in Satisfaction of a Pecuniary Bequest [§ 7.129]
 - e. Fiscal Years [§ 7.130]
 - f. Estimated Tax Payments [§ 7.131]
 - g. Charitable Set-Aside Deduction [§ 7.132]
 - h. Deductibility of Passive Losses from Rental Real Estate [§ 7.133]
 - i. Tax Elections [§ 7.134]
 - 3. Election to Treat Trust as Part of Estate [§ 7.135]
 - a. In General [§ 7.136]
 - b. Qualified Revocable Trusts [§ 7.137]
 - c. Election Period [§ 7.138]
 - d. General Procedures for Completing Form 1041 During the Election Period [§ 7.139]
 - 4. Personal Liability of Fiduciary [§ 7.140]

VIII. Forms [§ 7.141]

- A. In General [§ 7.142]
- B. Revocable Trust: Unmarried Settlor [§ 7.143]
 - 1. Introduction [§ 7.144]
 - 2. Form (EST-0053) [§ 7.145]
- C. Revocable Trust: Married Person Who Is Sole Settlor [§ 7.146]
 - 1. Introduction [§ 7.147]
 - 2. Form (EST-0054) [§ 7.148]
- D. Pour-Over Will: Revocable Trust with One Settlor (EST-0055) [§ 7.149]
- E. Marital Property Revocable Trust: Large Estates [§ 7.150]
 - 1. Introduction [§ 7.151]
 - 2. Form (EST-0056) [§ 7.152]
- F. Marital Property Revocable Trust: Modifications for Beneficially Interested Successor Trustee [§ 7.153]
 - 1. Introduction [§ 7.154]
 - 2. Appointment of Beneficiary-Trustee (EST-0057) [§ 7.155]
 - 3. Limiting Powers to Ascertainable Standard (EST-0058) [§ 7.156]
 - 4. Limiting Powers of Revocation, Termination, and Amendment (EST-0059) [§ 7.157]
 - 5. Limiting Trustee's Administrative Powers (EST-0060) [§ 7.158]
- G. Marital Property Revocable Trust: Small Estates [§ 7.159]
 - 1. Introduction [§ 7.160]
 - 2. Form (EST-0061) [§ 7.161]
- H. Pour-Over Will: Marital Property Revocable Trust (EST-0062) [§ 7.162]

CHAPTER 8

PURPOSES AND TECHNIQUES OF MAKING GIFTS

by Bradley J. Kalscheur & Patrick V. Anderl

I. Scope of Chapter [§ 8.1]

II. Federal Gift Tax [§ 8.2]

- A. Imposition of Tax [§ 8.3]
- B. Unified Transfer Tax System [§ 8.4]
 - 1. In General [§ 8.5]
 - 2. Unified Rate Schedule [§ 8.6]
 - 3. Applicable Credit Amount [§ 8.7]
 - a. In General [§ 8.8]
 - b. Reduction for Gifts Made Before 1977 [§ 8.9]
 - c. Married Donors [§ 8.10]
 - d. State Gift Tax [§ 8.11]
 - 4. Phaseout of Graduated Rates and Applicable Credit Amount for Very Large Transfers [§ 8.12]
 - 5. Heroes Earnings Assistance and Relief Tax (HEART) Act [§ 8.13]
- C. Exclusions [§ 8.14]
 - 1. Annual Exclusion [§ 8.15]
 - a. In General [§ 8.16]
 - b. Future Interests [§ 8.17]
 - c. *Crummey* Trust [§ 8.18]
 - d. Married Donors [§ 8.19]
 - e. ABLE Account [§ 8.20]
 - 2. Tuition and Medical Expenses [§ 8.21]
 - 3. Gifts to Political Organizations [§ 8.22]

- D. Deductions [§ 8.23]
 - 1. Deduction for Charitable Gifts [§ 8.24]
 - a. In General [§ 8.25]
 - b. Gifts of Split Interests [§ 8.26]
 - (1) In General [§ 8.27]
 - (2) Transfer of Remainder Interest to Charity [§ 8.28]
 - (3) Transfer of Income Interest to Charity [§ 8.29]
 - c. Gifts of Copyrighted Artworks [§ 8.30]
 - 2. Marital Deduction [§ 8.31]
 - a. In General [§ 8.32]
 - b. Citizenship Requirement [§ 8.33]
 - c. Deductible Interests [§ 8.34]
 - d. Nondeductible Interests [§ 8.35]
 - (1) In General [§ 8.36]
 - (2) Nondeductible Terminable Interests [§ 8.37]
 - e. Qualified Terminable Interest Property [§ 8.38]
- E. Gifts in Which Donor’s Spouse Joins [§ 8.39]
- F. Reporting and Payment [§ 8.40]
 - 1. Tax Returns [§ 8.41]
 - a. Who Must File [§ 8.42]
 - b. When and Where to File [§ 8.43]
 - 2. Payment [§ 8.44]
 - a. Who Must Pay [§ 8.45]
 - b. When Due [§ 8.46]
 - c. Interest on Underpayment or Nonpayment [§ 8.47]
 - 3. Penalties [§ 8.48]
 - a. Penalties for Failure to File or Pay [§ 8.49]
 - b. Criminal Penalties for Willful Failure to File or Pay [§ 8.50]
 - c. Undervaluation Penalties [§ 8.51]
 - 4. Statutes of Limitation [§ 8.52]
- G. Valuation [§ 8.53]
 - 1. In General [§ 8.54]
 - 2. Marketable Securities [§ 8.55]
 - 3. Interests in Businesses [§ 8.56]
 - 4. Promissory Notes [§ 8.57]
 - 5. Annuities, Life Estates, Terms for Years, Remainders, and Reversions [§ 8.58]
- H. Computation of Tax [§ 8.59]
 - 1. Determining Prior Years’ Taxable Gifts for Tax Rate Purposes [§ 8.60]
 - 2. Computing Gift Taxes Payable [§ 8.61]
- I. Federal Gift Tax Form and Instructions [§ 8.62]

III. Wisconsin Gift Tax [§ 8.63]

IV. Marital Property Considerations [§ 8.64]

- A. Gift of Marital Property to a Third Person [§ 8.65]
- B. Interspousal Gifts [§ 8.66]
- C. Classification of Gift Property [§ 8.67]

V. What Transfers Are Taxed [§ 8.68]

- A. Requirements of Effective Gift [§ 8.69]
 - 1. In General [§ 8.70]
 - 2. Transfer Must Be Complete and Irrevocable [§ 8.71]
 - 3. Payment of Income Taxes [§ 8.72]
 - 4. Consideration Must Be Inadequate [§ 8.73]
- B. Subject Matter of Gift [§ 8.74]

- C. Effect of Residency and Citizenship [§ 8.75]
- D. Special Cases [§ 8.76]
 - 1. In General [§ 8.77]
 - 2. Transfer by a Corporation [§ 8.78]
 - 3. Cancellation of Debt [§ 8.79]
 - 4. Transfer of Future Interest [§ 8.80]
 - 5. Transfer of Life Insurance Policy [§ 8.81]
 - 6. Creation of Joint Tenancy [§ 8.82]
 - 7. Creation of Joint Bank Account [§ 8.83]
 - 8. Sale of Property for Inadequate Consideration [§ 8.84]
 - 9. Transfer of Property in Consideration of Support Contract [§ 8.85]
 - 10. Exercise or Release of Power of Appointment [§ 8.86]
 - 11. Transfer by Attorney-in-Fact Under Power of Attorney [§ 8.87]
 - 12. Irrevocable Transfer to Trust [§ 8.88]
 - a. In General [§ 8.89]
 - b. Irrevocable Life Insurance Trust [§ 8.90]
 - c. Form: Simple Irrevocable Life Insurance Trust Agreement (EST-0065) [§ 8.91]
 - d. Generation-Skipping Transfer Tax [§ 8.92]
 - 13. Payment of Entire Income Tax by One Spouse [§ 8.93]
 - 14. Transfer of Life Estate, Retaining Reversion [§ 8.94]
 - 15. Transfer of Remainder Interest, Retaining Life Estate [§ 8.95]
 - a. Grantor Retained Income Trusts Eliminated [§ 8.96]
 - b. Qualified Personal Residence Trusts [§ 8.97]
 - c. Grantor Retained Annuity Trusts and Unitrusts [§ 8.98]
 - 16. Loan Guarantee [§ 8.99]

VI. Advantages of Making Lifetime Gifts [§ 8.100]

- A. Checklist [§ 8.101]
- B. Achieve Nontax Benefits [§ 8.102]
- C. Take Advantage of All Available Tax-Free Transfers [§ 8.103]
 - 1. In General [§ 8.104]
 - 2. Gift Tax Exclusions and Credits [§ 8.105]
 - a. Annual Gifts [§ 8.106]
 - b. Federal Applicable Credit Amount [§ 8.107]
 - 3. Death Tax Exemptions, Deductions, and Credits [§ 8.108]
 - 4. Exclusions and Credit of Donor's Spouse [§ 8.109]
 - 5. Exclusions of Donee's Spouse [§ 8.110]
 - 6. Gifts Made in Contemplation of Death [§ 8.111]
 - a. In General [§ 8.112]
 - b. Gifts Made from Revocable Trusts [§ 8.113]
- D. Control Appreciation in Donor's Estate [§ 8.114]
- E. Reduce Income Taxes (Income Shifting) [§ 8.115]
 - 1. Gift of Income-Producing Property to Low-Bracket Taxpayer [§ 8.116]
 - a. In General [§ 8.117]
 - b. Federal Income Tax [§ 8.118]
 - c. Wisconsin Income Tax [§ 8.119]
 - 2. Method for Giving Income-Producing Property [§ 8.120]
 - 3. Limitations of Income Shifting [§ 8.121]
 - a. Transfer to Child Under 18 [§ 8.122]
 - b. Assignment of Income [§ 8.123]
 - c. Transfer to Dependent [§ 8.124]
 - 4. Special Cases [§ 8.125]
 - a. Gift of Property Having Low Cost Basis [§ 8.126]
 - b. Gift to Short-Term Trust [§ 8.127]
 - c. Gift of Partnership Interest [§ 8.128]

- d. Gift of Shares of Stock [§ 8.129]
- e. Gift to Aged Parent [§ 8.130]
- f. Gift to Charity [§ 8.131]
- F. Deplete Donor's Estate [§ 8.132]
 - 1. Tax and Probate Advantages [§ 8.133]
 - 2. Potential Drawbacks [§ 8.134]
 - a. Loss of Income from Transferred Assets [§ 8.135]
 - b. Loss of Income from Assets Used to Pay Gift Tax [§ 8.136]
 - c. Loss of Financial Independence [§ 8.137]
- G. Reduce Value of Donor's Retained Assets [§ 8.138]

VII. Selection of Gift Property [§ 8.139]

- A. In General [§ 8.140]
- B. Investment Characteristics [§ 8.141]
 - 1. Income-Producing Property [§ 8.142]
 - 2. Property Likely to Appreciate [§ 8.143]
 - 3. Life Insurance [§ 8.144]
- C. Inflation [§ 8.145]
- D. Cost Basis [§ 8.146]
 - 1. In General [§ 8.147]
 - 2. Cost Basis for Gifts [§ 8.148]
 - 3. Cost Basis and Gift Planning [§ 8.149]
 - 4. Property Transferred Within One Year of Donee's Death [§ 8.150]
 - 5. Payment by Notes: Notes Canceled Gratuitously [§ 8.151]
- E. Qualification for Special Tax Treatment [§ 8.152]

VIII. Gifts to Minors [§ 8.153]

- A. In General [§ 8.154]
- B. Outright Gift Directly to Minor [§ 8.155]
 - 1. In General [§ 8.156]
 - 2. Arguments Against Outright Gift to Minor [§ 8.157]
 - a. Minor May Dissipate Assets [§ 8.158]
 - b. Minor Lacks Legal Capacity to Manage Assets [§ 8.159]
 - c. Parent Lacks Legal Control of Minor's Property [§ 8.160]
 - 3. Deposit in Bank Account [§ 8.161]
 - a. Joint Account [§ 8.162]
 - b. Control by Parent [§ 8.163]
 - c. Control by Minor [§ 8.164]
 - d. Death of Minor [§ 8.165]
 - 4. Purchase of U.S. Savings Bonds [§ 8.166]
 - a. Co-ownership [§ 8.167]
 - b. Sole Ownership [§ 8.168]
 - 5. Conveyance of Real Property [§ 8.169]
 - a. Joint Tenancy [§ 8.170]
 - b. Sole Ownership [§ 8.171]
 - c. Control by Minor [§ 8.172]
- C. Gift to Guardian [§ 8.173]
- D. Gift to Custodian Under Uniform Transfers to Minors Act [§ 8.174]
 - 1. In General [§ 8.175]
 - 2. Assets Subject to Custodianship [§ 8.176]
 - 3. Custodian [§ 8.177]
 - a. Who Can Be Custodian? [§ 8.178]
 - b. Who Should Be Custodian? [§ 8.179]
 - c. Custodian's Duties [§ 8.180]
 - d. Custodian's Powers [§ 8.181]

- e. Custodian’s Expenses and Compensation [§ 8.182]
 - f. Custodian’s Bond and Liabilities [§ 8.183]
 - 4. How to Give Specific Types of Property [§ 8.184]
 - a. Registered Security [§ 8.185]
 - b. Nonregistered Security [§ 8.186]
 - c. Cash [§ 8.187]
 - d. Life Insurance [§ 8.188]
 - 5. Effect of Transfer [§ 8.189]
 - 6. Tax Liability [§ 8.190]
 - a. Gift Taxes [§ 8.191]
 - b. Death Taxes [§ 8.192]
 - c. Income Taxes [§ 8.193]
 - 7. When to Use Custodianship [§ 8.194]
- E. Gift to Irrevocable Trust for Minor [§ 8.195]
 - 1. Introduction [§ 8.196]
 - a. What Is an Irrevocable Trust? [§ 8.197]
 - b. How Is an Irrevocable Trust Created? [§ 8.198]
 - c. Who Should Be Trustee? [§ 8.199]
 - d. Gift Taxes [§ 8.200]
 - e. Death Taxes [§ 8.201]
 - f. Income Taxes [§ 8.202]
 - (1) Federal Income Tax [§ 8.203]
 - (2) Wisconsin Income Tax [§ 8.204]
 - g. Reasons for Using an Irrevocable Trust [§ 8.205]
 - h. Drafting Considerations [§ 8.206]
 - 2. I.R.C. § 2503(c) Trust [§ 8.207]
 - a. Federal Gift Tax Exclusion [§ 8.208]
 - b. Disqualifying Provisions [§ 8.209]
 - c. Objections to Trust Requirements [§ 8.210]
 - d. Death Taxes [§ 8.211]
 - e. Form: I.R.C. § 2503(c) Trust (EST-0066) [§ 8.212]
 - 3. I.R.C. § 2503(b) Trust [§ 8.213]
 - 4. *Crummey* Trust [§ 8.214]
 - a. In General [§ 8.215]
 - b. Form: Sample Notice of *Crummey* Power (EST-0067) [§ 8.216]
 - 5. Education Savings Programs [§ 8.217]
 - a. Custodial Education Individual Retirement Account [§ 8.218]
 - b. Qualified State Tuition Programs [§ 8.219]

IX. Ineffective Gifts [§ 8.220]

- A. Promissory Note with No Consideration [§ 8.221]
- B. Undivided One-Half Interest in Tangible Personal Property [§ 8.222]
- C. Undelivered Deed [§ 8.223]
- D. Stock Certificate Endorsed in Blank [§ 8.224]
- E. Cancellation of Debt by Gift [§ 8.225]

X. Uniform Custodial Trust Act [§ 8.226]

- A. In General [§ 8.227]
- B. Creation and Operation of Custodial Trust [§ 8.228]
- C. Incapacity of Beneficiary [§ 8.229]
- D. Transactions with Third Parties [§ 8.230]
- E. Methods of Transferring Property to Custodial Trust [§ 8.231]

CHAPTER 9

MARITAL PROPERTY AGREEMENTS

by Jeff A. Goldman

I. Scope of Chapter [§ 9.1]

II. Who May Enter Into a Marital Property Agreement [§ 9.2]

- A. Couples Who May Legally Marry in Wisconsin [§ 9.3]
- B. Couples Who Are Not Permitted to Marry in Wisconsin But May Legitimately Marry Elsewhere [§ 9.4]
 - 1. In General [§ 9.5]
 - 2. Choice-of-Law Considerations [§ 9.6]
 - 3. Common-Law Contract Considerations [§ 9.7]
 - 4. Consideration [§ 9.8]

III. Marital Property Agreements as Part of the Estate Plan [§ 9.9]

- A. Impact of Marital Property Act on Estate Planning [§ 9.10]
- B. When Marital Property Agreement May Be Needed [§ 9.11]
 - 1. Checklist [§ 9.12]
 - 2. First Marriage of Long Standing [§ 9.13]
 - a. Most Assets Titled in One Spouse’s Name [§ 9.14]
 - b. Assets with Significant Unrealized Gains [§ 9.15]
 - 3. Subsequent Marriage with Children from Prior Marriage(s) [§ 9.16]
 - 4. Spouses with No Children [§ 9.17]
 - 5. Spouses with Nominal Assets All Owned in Joint Tenancy [§ 9.18]
 - 6. One Spouse with Substantial Financial Risks [§ 9.19]
 - 7. Spouses with Tangible Assets to Remain “in the Family” [§ 9.20]
 - 8. Spouses with Preexisting Sophisticated Estate Plan [§ 9.21]
 - 9. One Spouse with Interest in Closely Held Business [§ 9.22]
 - 10. Married Same-Sex Couples Previously in Long-Term Relationships Before *Baskin* or *Obergefell* [§ 9.23]

IV. Subject Matter of Marital Property Agreements [§ 9.24]

- A. Permissible Subjects [§ 9.25]
 - 1. In General [§ 9.26]
 - 2. Classification of Property [§ 9.27]
 - 3. Management and Control Rights [§ 9.28]
 - 4. Spouses’ Obligations for Debts [§ 9.29]
 - 5. Disposition of Property at Spouse’s Death or at Occurrence of Event [§ 9.30]
 - 6. Will-Substitute Agreement [§ 9.31]
 - 7. Disposition of Property at Dissolution [§ 9.32]
 - 8. Spousal Support Rights and Obligations [§ 9.33]
 - a. In General [§ 9.34]
 - b. During Marriage [§ 9.35]
 - c. At Dissolution [§ 9.36]
 - d. After Spouse’s Death [§ 9.37]
 - 9. Choice of Law [§ 9.38]
 - 10. Other Matters [§ 9.39]
 - a. Limitations on Gifts [§ 9.40]
 - b. Allocation of Income Tax Liability [§ 9.41]
 - c. Digital Property (EST-0308) [§ 9.42]
- B. Limitations on Subject Matter [§ 9.43]
 - 1. Checklist [§ 9.44]
 - 2. Duty of Good Faith [§ 9.45]
 - 3. Protection of Creditors’ Interests [§ 9.46]

- 4. Protection of Children’s Interests [§ 9.47]
- 5. Protection of Bona Fide Purchasers [§ 9.48]
- 6. Spousal Support [§ 9.49]
- 7. Limitation on Altering Income Tax Consequences [§ 9.50]
 - a. State Law [§ 9.51]
 - b. Federal Law [§ 9.52]

V. Provisions for Death in Marital Property Agreements [§ 9.53]

- A. Classification of Assets at Death [§ 9.54]
- B. Provisions for Surviving Spouse at Other Spouse’s Death [§ 9.55]
 - 1. In General [§ 9.56]
 - 2. Agreement to Provide Benefits by Will or Otherwise [§ 9.57]
 - 3. Incorporation of Wills or Trust Agreements [§ 9.58]
 - 4. Combination [§ 9.59]

VI. Other Provisions of Marital Property Agreements [§ 9.60]

- A. In General [§ 9.61]
- B. Management of Debts, Assets, and Expenses During Marriage [§ 9.62]
 - 1. Creditors’ Claims [§ 9.63]
 - 2. Management and Control of Assets [§ 9.64]
 - 3. Expenses of the Marriage [§ 9.65]
 - a. In General [§ 9.66]
 - b. Agreement Remains Silent [§ 9.67]
 - c. Sharing of Expenses [§ 9.68]
 - d. One Party Assumes Responsibility [§ 9.69]
- C. Division of Assets and Maintenance at Dissolution [§ 9.70]
 - 1. In General [§ 9.71]
 - 2. Comparison of Divorce and Marital Property Law [§ 9.72]
 - a. In General [§ 9.73]
 - b. Principle of Equality [§ 9.74]
 - c. Shared and Unshared Property [§ 9.75]
 - d. Tracing Principles [§ 9.76]
 - e. Effect of Mixing [§ 9.77]
 - f. Appreciation of Exempt or Nonmarital Property [§ 9.78]
 - g. Income from Exempt or Nonmarital Property [§ 9.79]
 - h. Division of Retirement Assets [§ 9.80]
 - i. Enforceability of Marital Property Agreements [§ 9.81]

VII. Execution and Enforceability of Marital Property Agreements [§ 9.82]

- A. In General [§ 9.83]
- B. Enforceability During Ongoing Marriage and at Spouse’s Death [§ 9.84]
 - 1. Requirements for Execution [§ 9.85]
 - 2. Amendment or Revocation [§ 9.86]
 - 3. Effective Date of Agreements Executed Before Marriage [§ 9.87]
 - 4. Consideration [§ 9.88]
 - 5. Standard of Review for Enforceability [§ 9.89]
 - a. In General [§ 9.90]
 - b. Unconscionability [§ 9.91]
 - c. Voluntariness [§ 9.92]
 - d. Financial Disclosure [§ 9.93]
 - 6. Time for Judging Enforceability [§ 9.94]
 - 7. Legal Representation [§ 9.95]
 - 8. Common-Law Contract Defenses [§ 9.96]
 - 9. Statutes of Limitation [§ 9.97]

- C. Enforceability at Dissolution [§ 9.98]
 - 1. In General [§ 9.99]
 - 2. Standard of Review for Enforceability [§ 9.100]
 - a. Equitableness [§ 9.101]
 - b. Voluntariness [§ 9.102]
 - c. Financial Disclosure [§ 9.103]
 - d. Substantive Fairness [§ 9.104]
 - 3. Time for Judging Enforceability [§ 9.105]
 - 4. Legal Representation [§ 9.106]
 - 5. Effect of Property Classification [§ 9.107]
 - 6. Conduct After Execution of Agreement [§ 9.108]
 - 7. Maintenance Agreements [§ 9.109]
- D. Statutory Agreements [§ 9.110]
 - 1. Statutory Opt-In Agreement [§ 9.111]
 - 2. Statutory Opt-Out Agreement [§ 9.112]
- E. Statutory Individual Property Classification Agreements (Before 1/1/87) [§ 9.113]

VIII. Alternatives to Marital Property Agreements [§ 9.114]

- A. Reclassification by Gift [§ 9.115]
- B. Reclassification Through Use of Trusts [§ 9.116]
- C. Reclassification by Conveyance [§ 9.117]
- D. Reclassification Through Unilateral Action of One Spouse [§ 9.118]
 - 1. Unilateral Conveyance [§ 9.119]
 - 2. Unilateral Statement [§ 9.120]
- E. Reclassification Through Life Insurance Consents [§ 9.121]
- F. Avoidance of Commingling [§ 9.122]

IX. Forms [§ 9.123]

- A. Marital Property Agreements [§ 9.124]
 - 1. Introduction [§ 9.125]
 - 2. Opt-Out Marital Property Agreement (EST-0068) [§ 9.126]
 - 3. Opt-In Marital Property Agreement (EST-0069) [§ 9.127]
 - 4. Limited Marital Property Agreement (EST-0070) [§ 9.128]
- B. Miscellaneous Forms Under the Act [§ 9.129]
 - 1. Unilateral Statement [§ 9.130]
 - a. Introduction [§ 9.131]
 - b. Form (EST-0071) [§ 9.132]
 - 2. Affidavit of Assets, Income, Liabilities, and Expenses [§ 9.133]
 - a. Introduction [§ 9.134]
 - b. Form (EST-0072) [§ 9.135]
 - 3. Affidavit of Facts Regarding Marital Property Agreement [§ 9.136]
 - a. Introduction [§ 9.137]
 - b. Form (EST-0073) [§ 9.138]
 - 4. Waiver of Independent Legal Representation [§ 9.139]
 - a. Introduction [§ 9.140]
 - b. Form (EST-0074) [§ 9.141]
- C. Cohabitation Agreement [§ 9.142]
 - 1. Introduction [§ 9.143]
 - 2. Form (EST-0075) [§ 9.144]

CHAPTER 10
ESTATE PLANNING FOR OWNERS OF CLOSELY HELD BUSINESSES
by Steven E. Grimm

I. Scope of Chapter [§ 10.1]

II. Selecting Form of Closely Held Business [§ 10.2]

- A. Basic Forms of Ownership [§ 10.3]
 - 1. In General [§ 10.4]
 - 2. Advantages and Disadvantages [§ 10.5]
- B. Liability [§ 10.6]
- C. Tax Consequences During Operations [§ 10.7]
 - 1. Capital Accumulation [§ 10.8]
 - 2. Distribution of Profits [§ 10.9]
 - 3. Deduction of Losses [§ 10.10]
 - 4. Qualified Retirement Plans [§ 10.11]
 - 5. Other Fringe Benefits for Owner-Employees [§ 10.12]
 - 6. Compensation and Accumulated Earnings [§ 10.13]
- D. Tax Consequences of Sale After Death [§ 10.14]
 - 1. Sole Proprietorships [§ 10.15]
 - 2. Partnerships [§ 10.16]
 - 3. LLCs [§ 10.17]
 - 4. C Corporations [§ 10.18]
 - 5. S Corporations [§ 10.19]
- E. Tax Consequences of Distributing Funds After Death [§ 10.20]
 - 1. C Corporations [§ 10.21]
 - 2. S Corporations [§ 10.22]
 - 3. Sole Proprietorships, Partnerships, and LLCs [§ 10.23]
- F. Tax Law Restrictions on Ownership [§ 10.24]
 - 1. In General [§ 10.25]
 - 2. S Corporations [§ 10.26]
 - a. In General [§ 10.27]
 - b. Trusts Permitted as S Corporation Shareholders [§ 10.28]
 - (1) In General [§ 10.29]
 - (2) Qualified Subchapter S Trust [§ 10.30]
 - (3) Electing Small Business Trust [§ 10.31]
 - (4) Voting Trust [§ 10.32]
 - (5) Grantor Trust [§ 10.33]

III. Transferring Family Business to Next Generation [§ 10.34]

- A. Common Family Situation [§ 10.35]
- B. Business Owner's Objectives [§ 10.36]
 - 1. Survival of Business [§ 10.37]
 - 2. Preserving Family Harmony [§ 10.38]
 - 3. Treating Children Fairly [§ 10.39]
- C. Ownership Limited to Operating Children [§ 10.40]
 - 1. Reasons to Limit Ownership to Operating Children [§ 10.41]
 - 2. Alternative Bequests to Nonoperating Children [§ 10.42]
 - 3. Life Insurance [§ 10.43]
 - 4. Long-Term Leases of Business-Related Assets [§ 10.44]
 - a. In General [§ 10.45]
 - b. Sample Cost-of-Living Adjustment Clause (EST-0076) [§ 10.46]
 - c. Sample Option-to-Purchase Clause (EST-0077) [§ 10.47]
 - 5. Mandatory Buyout of Nonoperating Children [§ 10.48]
 - 6. Options to Purchase or Sell [§ 10.49]

7. Lifetime Sale to Operating Children [§ 10.50]
8. Estate Freezes [§ 10.51]
9. Valuation Discounts [§ 10.52]
- D. Ownership Shared by Operating and Nonoperating Children [§ 10.53]
 1. Reasons to Make Both Operating and Nonoperating Children Owners [§ 10.54]
 2. Control of Business [§ 10.55]
 3. Allocation of Future Growth [§ 10.56]
 4. Distributions of Business Income [§ 10.57]
 5. Valuation Discounts [§ 10.58]

IV. Designing Buy-Sell Agreements [§ 10.59]

- A. Nature of Buy-Sell Agreements [§ 10.60]
 1. Overview [§ 10.61]
 2. Types of Buy-Sell Agreements [§ 10.62]
 3. Mandatory or Optional Buyout [§ 10.63]
 4. Methods of Determining Purchase Price [§ 10.64]
 - a. Checklist [§ 10.65]
 - b. Net Book Value [§ 10.66]
 - c. Net Book Value with Adjustments [§ 10.67]
 - (1) In General [§ 10.68]
 - (2) Sample Clause (EST-0078) [§ 10.69]
 - d. Multiple of Earnings [§ 10.70]
 - e. Net Book Value/Multiple of Earnings [§ 10.71]
 - (1) In General [§ 10.72]
 - (2) Sample Clause (EST-0079) [§ 10.73]
 - f. Specifically Stated Value, Revised Annually [§ 10.74]
 - g. Outside Appraiser [§ 10.75]
 - h. “Solomon’s Choice” [§ 10.76]
 - (1) In General [§ 10.77]
 - (2) Sample Clause (EST-0080) [§ 10.78]
 - i. Option to Liquidate [§ 10.79]
 - (1) In General [§ 10.80]
 - (2) Sample Clause (EST-0081) [§ 10.81]
 5. Common Payment Terms [§ 10.82]
 6. Conflict of Interest [§ 10.83]
- B. Benefits of Buy-Sell Agreements [§ 10.84]
 1. Creation of Ready Market [§ 10.85]
 2. Continuity of Management [§ 10.86]
 3. Providing for Tag-Along and Drag-Along Rights for Majority and Minority Owners [§ 10.87]
 - a. In General [§ 10.88]
 - b. Sample Clauses [§ 10.89]
 4. Fixing Business Value for Estate Tax Purposes [§ 10.90]
 - a. Benefits of Fixed Value [§ 10.91]
 - b. Requirements for Fixed Value [§ 10.92]
 - (1) In General [§ 10.93]
 - (2) Ascertainable Value [§ 10.94]
 - (3) Obligation to Sell at Business Owner’s Death [§ 10.95]
 - (4) Restrictions on Lifetime Transfers [§ 10.96]
 - (5) Bona Fide Business Arrangement [§ 10.97]
 - (6) Comparable to Similar Arm’s-Length Arrangements [§ 10.98]
- C. Effect of Marital Property Law [§ 10.99]
 1. Classification of Business Interest [§ 10.100]
 - a. In General [§ 10.101]
 - b. Marital Property Mixed with Business Interest [§ 10.102]

- c. Effect of Buy-Sell Agreement on Marital Property Business Interest [§ 10.103]
 - d. Inadvertent Transfer at Death by Nonholding Spouse [§ 10.104]
 - e. Strategies to Prevent Inadvertent Transfer by Nonholding Spouse [§ 10.105]
 - (1) Additional Triggering Event [§ 10.106]
 - (2) Marital Property Agreements [§ 10.107]
 - (3) Option to Purchase Under Buy-Sell Agreement [§ 10.108]
 - (4) Statutory Option to Purchase [§ 10.109]
 - f. Nonholding Spouse as Party to Buy-Sell Agreement [§ 10.110]
 - 2. Classification of Life Insurance Used to Fund Buy-Sell Agreements [§ 10.111]
 - a. In General [§ 10.112]
 - b. Special Problems with Funded Cross Purchase Agreements [§ 10.113]
 - (1) In General [§ 10.114]
 - (2) Inadvertent Transfer at Death by Nonholding Spouse [§ 10.115]
 - (3) Marital Property Interest of Policyholder's Spouse upon Insured's Death [§ 10.116]
- D. Factors to Consider in Choosing Type of Buy-Sell Agreement [§ 10.117]
 - 1. In General [§ 10.118]
 - 2. Marital Property Considerations [§ 10.119]
 - 3. Tax Basis of Remaining Business Owners [§ 10.120]
 - 4. Tax Treatment of Payments Received by Seller [§ 10.121]
 - a. In General [§ 10.122]
 - b. Redemption Distributions: Exceptions to Dividend Treatment [§ 10.123]
 - (1) In General [§ 10.124]
 - (2) Effect of Attribution Rules on Complete Termination of Interest [§ 10.125]
 - 5. Insurance Considerations [§ 10.126]
 - a. Policy Ownership Structure [§ 10.127]
 - b. Corporate Alternative Minimum Tax [§ 10.128]
 - c. After-Tax Cost of Premiums [§ 10.129]
- E. Relative Advantages of Entity Purchase and Cross Purchase Agreements [§ 10.130]
- F. Form: Stock Redemption Agreement (EST-0082) [§ 10.131]
- G. Form: Cross Purchase Agreement (EST-0083) [§ 10.132]

- V. Restricting Transfers of Interests in Closely Held Businesses [§ 10.133]**
- A. Reasons for Transfer Restrictions [§ 10.134]
- B. Types and Validity of Transfer Restrictions [§ 10.135]
 - 1. In General [§ 10.136]
 - 2. Absolute Restrictions on Transfer [§ 10.137]
 - 3. Unanimous Consent of Other Business Owners [§ 10.138]
 - 4. Right of First Refusal [§ 10.139]
 - 5. Option to Purchase [§ 10.140]
- C. Methods of Imposing Transfer Restrictions [§ 10.141]
 - 1. Articles of Incorporation [§ 10.142]
 - 2. Corporate Bylaws [§ 10.143]
 - 3. Shareholders' Agreement [§ 10.144]
 - 4. Partnership Agreement [§ 10.145]
 - 5. LLC Operating Agreement [§ 10.146]
- VI. Postmortem Tax Planning [§ 10.147]**
- A. Deferred Payment of Federal Estate Taxes: I.R.C. § 6166 [§ 10.148]
 - 1. In General [§ 10.149]
 - 2. Qualification Requirements [§ 10.150]
 - 3. Closely Held Business Defined [§ 10.151]
 - 4. 35% Test [§ 10.152]
 - a. In General [§ 10.153]
 - b. Strategies for Meeting Test [§ 10.154]

5. Election by Personal Representative [§ 10.155]
6. Personal Liability of Personal Representative [§ 10.156]
 - a. In General [§ 10.157]
 - b. Discharge of Personal Liability: I.R.C. § 2204 [§ 10.158]
 - c. Sample I.R.C. § 2204 Application (EST-0084) [§ 10.159]
7. Acceleration of Deferred Estate Taxes [§ 10.160]
8. Installment Payment of Wisconsin Estate Taxes [§ 10.161]
- B. Redemption of Stock to Pay Death Taxes: I.R.C. § 303 [§ 10.162]
 1. In General [§ 10.163]
 2. Qualification Requirements [§ 10.164]
 3. 35% Test [§ 10.165]
 4. Limit on Redemption Amount [§ 10.166]
 5. Limit on Whose Stock Is Redeemed [§ 10.167]
 6. Time Limits [§ 10.168]
 7. Use of Promissory Note [§ 10.169]
 8. I.R.C. § 303 Redemption Agreement [§ 10.170]
 - a. Introduction [§ 10.171]
 - b. Form (EST-0085) [§ 10.172]
- C. Adjustment to Basis of Partnership and LLC Property: I.R.C. § 754 [§ 10.173]
 1. In General [§ 10.174]
 2. Election [§ 10.175]
- D. Special Use Valuation of Certain Real Property: I.R.C. § 2032A [§ 10.176]
 1. In General [§ 10.177]
 2. Qualification Requirements [§ 10.178]

CHAPTER 11

MISCELLANEOUS ESTATE PLANNING ISSUES

by Carl J. Rasmussen, Susan L. Collins, & Elizabeth A. Heiner

I. Scope of Chapter [§ 11.1]

II. Durable Power of Attorney for Finances and Property [§ 11.2]

- A. Background [§ 11.3]
- B. Applicability [§ 11.4]
- C. Definitions [§ 11.5]
 1. In General [§ 11.6]
 2. Agent and Principal [§ 11.7]
 3. Power of Attorney; Durable Power of Attorney [§ 11.8]
 4. Incapacity [§ 11.9]
- D. Elements; Execution; Effect [§ 11.10]
 1. Basic Elements [§ 11.11]
 2. Durability [§ 11.12]
 3. Execution [§ 11.13]
 4. When Effective: Immediately Effective or Springing [§ 11.14]
 5. Validity [§ 11.15]
 6. Meaning and Effect [§ 11.16]
- E. Office of Agent [§ 11.17]
 1. Agent's Acceptance [§ 11.18]
 2. Co-Agents and Successor Agents [§ 11.19]
 - a. Co-Agents [§ 11.20]
 - b. Successor Agents [§ 11.21]
 - c. Liability [§ 11.22]
 3. Nomination of Guardian; Agent's Relation to Court-Appointed Fiduciary [§ 11.23]
 4. Reimbursement and Compensation [§ 11.24]

- 5. Agent’s Liability [§ 11.25]
- 6. Agent’s Resignation [§ 11.26]
- 7. Agent’s Duties [§ 11.27]
- 8. Exoneration of Agent [§ 11.28]
- F. Termination of Power of Attorney or Agent’s Authority [§ 11.29]
- G. Revocation [§ 11.30]
- H. Judicial Relief [§ 11.31]
- I. Protection of Persons Who Accept Acknowledged Power of Attorney [§ 11.32]
- J. Refusal to Accept Acknowledged Power of Attorney [§ 11.33]
- K. Laws Applicable to Financial Institutions and Entities [§ 11.34]
- L. Authorities: The Agent’s Powers [§ 11.35]
 - 1. Routine, Dangerous, and Nondelegable Powers [§ 11.36]
 - a. In General [§ 11.37]
 - b. Routine Powers [§ 11.38]
 - c. Dangerous Powers [§ 11.39]
 - d. Nondelegable Powers [§ 11.40]
 - 2. Authority that Requires Specific Grant; Grant of General Authority [§ 11.41]
 - 3. Incorporation of Authority [§ 11.42]
 - 4. Construction of Authority Generally [§ 11.43]
 - 5. Grant of 14 General Powers: Real Estate Through Taxes [§ 11.44]
 - a. Introduction [§ 11.45]
 - b. Real Property [§ 11.46]
 - c. Digital Property [§ 11.47]
 - d. Tangible Personal Property [§ 11.48]
 - e. Stocks and Bonds [§ 11.49]
 - f. Commodities and Options [§ 11.50]
 - g. Banks and Other Financial Institutions [§ 11.51]
 - h. Operation of Entity or Business [§ 11.52]
 - i. Insurance and Annuities [§ 11.53]
 - j. Estates, Trusts, and Beneficial Interests [§ 11.54]
 - (1) In General [§ 11.55]
 - (2) Funding the Revocable Trust [§ 11.56]
 - (3) Presently Exercisable Power of Appointment [§ 11.57]
 - (4) Spousal Elections [§ 11.58]
 - (5) Disclaimer [§ 11.59]
 - (6) Agent for Person in the Military [§ 11.60]
 - k. Claims and Litigation [§ 11.61]
 - l. Personal and Family Maintenance [§ 11.62]
 - (1) In General [§ 11.63]
 - (2) Individuals Who May Receive Payments [§ 11.64]
 - (3) Authority with Respect to Personal and Family Maintenance [§ 11.65]
 - (4) Personal and Family Maintenance and Gifting Authority [§ 11.66]
 - (5) Agent’s Authority to Benefit Agent [§ 11.67]
 - (6) HIPAA Representative [§ 11.68]
 - m. Benefits from Government Programs or Civil or Military Service [§ 11.69]
 - n. Retirement Plans [§ 11.70]
 - o. Taxes [§ 11.71]
 - p. Gifts [§ 11.72]
- M. Relation to Power of Attorney for Health Care [§ 11.73]
 - 1. Durable Power Executed Before April 28, 1990 [§ 11.74]
 - 2. Durable Power Executed on or After April 28, 1990, and Before September 1, 2010 [§ 11.75]
 - 3. Durable Power Executed on or After September 1, 2010 [§ 11.76]

- N. Other Issues [§ 11.77]
 - 1. Conflict of Laws [§ 11.78]
 - 2. Marital Property Issues [§ 11.79]
 - a. Delegating Management and Control [§ 11.80]
 - b. Making, Amending, and Revoking Marital Property Agreements [§ 11.81]
 - 3. Domestic Partnership [§ 11.82]
 - 4. Third-Party Restrictions [§ 11.83]
 - a. In General [§ 11.84]
 - b. Social Security [§ 11.85]
 - c. IRS and Wisconsin Department of Revenue [§ 11.86]
 - 5. Tax Issues [§ 11.87]
 - a. General Power of Appointment [§ 11.88]
 - b. Gift Tax [§ 11.89]
 - c. Incidents of Ownership over Life Insurance Policy [§ 11.90]
 - d. Attorney as Agent [§ 11.91]
- O. Statutory Form Power of Attorney for Finances and Property [§ 11.92]
- P. Agent's Certification [§ 11.93]
- Q. Distribution of Forms [§ 11.94]
- R. Forms [§ 11.95]
 - 1. General Durable Power of Attorney [§ 11.96]
 - a. Introduction [§ 11.97]
 - b. Form (EST-0086) [§ 11.98]
 - 2. Nonroutine or Dangerous Powers [§ 11.99]
 - a. In General [§ 11.100]
 - b. Power to Revoke (EST-0087) [§ 11.101]
 - c. Power to Make Gifts (EST-0088) [§ 11.102]
 - d. Record of Receipts, Disbursements, and Transactions (EST-0089) [§ 11.103]
 - e. Disclosure to Governmental Agencies (EST-0090) [§ 11.104]
 - f. Power of Substitution (EST-0091) [§ 11.105]
 - g. Exculpation (EST-0092) [§ 11.106]
 - h. Digital Property, Including Content of Electronic Communications (EST-0093) [§ 11.107]
 - 3. Limited Durable Power of Attorney for Purposes of Funding a Trust (EST-0094) [§ 11.108]
- S. Power of Attorney Delegating Parental Power [§ 11.109]

III. Planning for Health-Care Decision-Making: Living Will and Power of Attorney for Health Care [§ 11.110]

- A. Introduction [§ 11.111]
 - 1. In General [§ 11.112]
 - 2. Key Issues Related to the Living Will and POAHC [§ 11.113]
 - a. In General [§ 11.114]
 - b. Withholding and Withdrawing Health Care [§ 11.115]
 - c. Nutrition and Hydration [§ 11.116]
 - d. Potential Conflict in Statutory Forms [§ 11.117]
 - e. Do-Not-Resuscitate Orders [§ 11.118]
 - f. Hospice Care [§ 11.119]
 - 3. Constitutional and Common-Law Rights [§ 11.120]
- B. Living Will in Wisconsin: Wis. Stat. Ch. 154 [§ 11.121]
 - 1. Introduction [§ 11.122]
 - a. In General [§ 11.123]
 - b. When Living Will Is Appropriate [§ 11.124]
 - 2. Statutory Authority [§ 11.125]
 - 3. Other Rights [§ 11.126]
 - 4. Some Definitions [§ 11.127]
 - a. In General [§ 11.128]

- b. Terminal Condition and Persistent Vegetative State [§ 11.129]
 - c. Life-Sustaining Procedure and Feeding Tube [§ 11.130]
 - d. Qualified Patient [§ 11.131]
 - 5. Formal Requirements [§ 11.132]
 - a. Execution [§ 11.133]
 - b. Notification of Physician [§ 11.134]
 - c. Filing [§ 11.135]
 - 6. Effective Date [§ 11.136]
 - 7. Revocation [§ 11.137]
 - 8. Duties and Immunities [§ 11.138]
 - 9. Penalties [§ 11.139]
 - 10. Other Provisions [§ 11.140]
 - a. Pregnancy [§ 11.141]
 - b. Suicide [§ 11.142]
 - c. Insurance [§ 11.143]
 - 11. Prior Statutes [§ 11.144]
 - 12. Living Will Forms [§ 11.145]
- C. Power of Attorney for Health Care in Wisconsin: Wis. Stat. Ch. 155 [§ 11.146]
 - 1. Introduction [§ 11.147]
 - 2. Statutory Authority [§ 11.148]
 - 3. Other Rights [§ 11.149]
 - 4. Some Definitions [§ 11.150]
 - a. Health-Care Decision [§ 11.151]
 - b. Incapacity [§ 11.152]
 - (1) Definition [§ 11.153]
 - (2) Finding of Incapacity [§ 11.154]
 - (3) Effect of Incapacity [§ 11.155]
 - 5. Formal Requirements [§ 11.156]
 - a. Execution [§ 11.157]
 - b. Appointment of Health-Care Agent [§ 11.158]
 - c. Notification of Health-Care Providers and Agent [§ 11.159]
 - d. Filing [§ 11.160]
 - 6. Effective Date [§ 11.161]
 - 7. Revocation [§ 11.162]
 - 8. Limitations on Agent's Powers [§ 11.163]
 - a. In General [§ 11.164]
 - b. Admission to Certain Facilities and Treatment: Mental Illness or Developmental Disability [§ 11.165]
 - c. Admission to Nursing Homes and CBRFs: No Mental Illness or Developmental Disability [§ 11.166]
 - d. Decisions During Pregnancy [§ 11.167]
 - e. Withholding or Withdrawing Nutrition and Hydration [§ 11.168]
 - 9. Anatomical Gifts [§ 11.169]
 - a. Gift During Life [§ 11.170]
 - b. Gift Taking Effect at Death [§ 11.171]
 - 10. Immunity [§ 11.172]
 - a. For Agent [§ 11.173]
 - b. For Health-Care Facilities and Providers [§ 11.174]
 - c. For Witnesses [§ 11.175]
 - 11. Penalties [§ 11.176]
 - 12. Other Provisions [§ 11.177]
 - a. Suicide [§ 11.178]
 - b. Insurance [§ 11.179]
 - c. Health-Care Delivery [§ 11.180]
 - d. Guardianship [§ 11.181]

- e. Agent’s Role in Protective Placement or Protective Services Proceedings [§ 11.182]
 - f. Review by Court [§ 11.183]
 - g. Agent’s Authority to Execute Documents [§ 11.184]
 - 13. POAHC Forms [§ 11.185]
 - 14. Prior Statutes [§ 11.186]
- D. Relationship Between POAHC and Living Will [§ 11.187]
 - 1. Are Both a Living Will and POAHC Needed? [§ 11.188]
 - 2. Which Takes Precedence When Instruments Are Inconsistent? [§ 11.189]
 - 3. Drafting Instrument Integrating POAHC and Living Will [§ 11.190]
- E. Jurisdictional Issues [§ 11.191]
- F. General Guidelines for Practice [§ 11.192]
 - 1. In General [§ 11.193]
 - 2. Execute a POAHC [§ 11.194]
 - 3. Execute a Living Will [§ 11.195]
 - 4. Review Facility Policies Regarding Advance Care Directives [§ 11.196]
 - 5. Work with Ethics Committee on Problems [§ 11.197]
 - 6. Avoid Guardianship [§ 11.198]
- G. Forms [§ 11.199]
 - 1. Statutory Form Power of Attorney for Health Care [§ 11.200]
 - 2. Nonstatutory Form Power of Attorney for Health Care (Integrated with Living Will) [§ 11.201]
 - a. Form (EST-0095) [§ 11.202]
 - b. Notice to Clients Considering Form (EST-0096) [§ 11.203]
 - c. Notice to Clients Executing Form (EST-0097) [§ 11.204]
 - 3. Statutory Form Living Will [§ 11.205]
 - 4. Nonstatutory Form Living Will (EST-0098) [§ 11.206]

- IV. Supported Decision-Making [§ 11.207]**
- A. Introduction [§ 11.208]
- B. Definitions [§ 11.209]
 - 1. In General [§ 11.210]
 - 2. Functional Impairment [§ 11.211]
 - 3. Supported Decision-Making [§ 11.212]
 - 4. Supporter [§ 11.213]
- C. Scope of Authority [§ 11.214]
- D. Access to Personal Information [§ 11.215]
- E. Execution; Validity [§ 11.216]
- F. Form (EST-0309) [§ 11.217]
- G. Termination; Revocation; Resignation [§ 11.218]
- H. Third-Party Reliance and Limitation of Liability [§ 11.219]
- I. Supporter Limitation of Liability [§ 11.220]
- J. Reporting of Suspected Abuse, Neglect, or Financial Exploitation [§ 11.221]
- K. Supported Decision-Making Agreements and Powers of Attorney [§ 11.222]
- L. Supported Decision-Making Agreements and Guardianship [§ 11.223]
- V. Anatomical Gifts [§ 11.224]**
- A. Introduction [§ 11.225]
- B. Who May Make an Anatomical Gift [§ 11.226]
 - 1. Before the Donor’s Death [§ 11.227]
 - 2. Near or Upon the Donor’s Death [§ 11.228]
- C. How an Anatomical Gift Is Made [§ 11.229]
 - 1. Before the Donor’s Death [§ 11.230]
 - 2. Near or Upon the Donor’s Death [§ 11.231]
- D. Amending or Revoking an Anatomical Gift [§ 11.232]
- E. Refusals to Make an Anatomical Gift [§ 11.233]

F. Validity [§ 11.234]

VI. Authorization for Final Disposition [§ 11.235]

- A. Scope [§ 11.236]
- B. Individuals with Control of Final Disposition [§ 11.237]
- C. Execution [§ 11.238]
- D. Appointment of Representative [§ 11.239]
- E. Scope of Representative's Duties [§ 11.240]
- F. Effective Date [§ 11.241]
- G. Revocation [§ 11.242]
- H. Limitations on Representative's Powers [§ 11.243]
- I. Penalties [§ 11.244]
- J. Form [§ 11.245]

VII. Contracts to Make Wills [§ 11.246]

- A. Introduction [§ 11.247]
- B. Some Definitions [§ 11.248]
 - 1. In General [§ 11.249]
 - 2. Joint, Mutual, or Reciprocal Wills [§ 11.250]
 - 3. Contracts to Make Wills [§ 11.251]
 - 4. Contractual Wills [§ 11.252]
- C. Impact of Marital Property Act [§ 11.253]
- D. Effects of Contracts to Make Wills [§ 11.254]
 - 1. In General [§ 11.255]
 - 2. Wis. Stat. § 853.13 [§ 11.256]
 - 3. When Contract Becomes Binding [§ 11.257]
 - 4. Rights of Third Parties [§ 11.258]
 - 5. Surviving Party's Use of Assets [§ 11.259]
 - 6. Probate [§ 11.260]
 - a. Enforcement of Contract [§ 11.261]
 - b. Time for Filing Claims Under Contract [§ 11.262]
- E. Tax Issues [§ 11.263]
 - 1. In General [§ 11.264]
 - 2. Marital Deduction [§ 11.265]
 - a. In General [§ 11.266]
 - b. Terminable Interests [§ 11.267]
 - 3. Gift Tax Issues [§ 11.268]
- F. Alternatives to Contractual Wills [§ 11.269]
 - 1. Inter Vivos Transfers [§ 11.270]
 - 2. Trusts [§ 11.271]
 - 3. Will-Substitute Agreements [§ 11.272]
- G. Drafting Checklists [§ 11.273]

VIII. Disclaimer [§ 11.274]

- A. Introduction [§ 11.275]
- B. Valid Disclaimers [§ 11.276]
 - 1. Relationship of State and Federal Law [§ 11.277]
 - 2. Basic Requirements [§ 11.278]
 - 3. Delivery and Filing [§ 11.279]
 - 4. Time Limit for Delivery [§ 11.280]
 - 5. No Acceptance of Benefits [§ 11.281]
 - a. In General [§ 11.282]
 - b. Disclaimer by Surviving Spouse [§ 11.283]
 - 6. Effect of Precatory Language [§ 11.284]
 - 7. Disclaimer of Qualified Pension and IRA Benefits [§ 11.285]

- C. Disclaimable Interests [§ 11.286]
 - 1. Interest in Property [§ 11.287]
 - 2. Less Than Entire Interest [§ 11.288]
 - a. Powers of Appointment [§ 11.289]
 - b. Undivided Portion [§ 11.290]
 - c. Separate Interests [§ 11.291]
 - d. Pecuniary Amount [§ 11.292]
 - e. Severable Property [§ 11.293]
- D. Devolution [§ 11.294]
- E. Areas of Concern [§ 11.295]
 - 1. Disclaimer by Personal Representative [§ 11.296]
 - 2. Disclaimer by Trustee [§ 11.297]
 - 3. Disclaimer by Guardian [§ 11.298]
 - 4. Joint Tenancy [§ 11.299]
 - 5. Joint Accounts [§ 11.300]
 - 6. Marital Property [§ 11.301]
 - 7. Survivorship Marital Property [§ 11.302]
 - 8. Spendthrift Provisions [§ 11.303]
 - 9. Creditors' Rights [§ 11.304]
 - a. In General [§ 11.305]
 - b. Title XIX Divestment [§ 11.306]
 - 10. Disclaimer by Agent Under Durable Power of Attorney [§ 11.307]
- F. Forms [§ 11.308]
 - 1. Disclaimer of Entire Interest in Testamentary Trust (EST-0099) [§ 11.309]
 - 2. Disclaimer of Insurance Proceeds (EST-0100) [§ 11.310]

IX. Planning for Digital Property [§ 11.311]

- A. Introduction [§ 11.312]
- B. Wisconsin Digital Property Act [§ 11.313]
 - 1. Introduction [§ 11.314]
 - 2. Key Definitions [§ 11.315]
 - a. Digital Property [§ 11.316]
 - b. Electronic Communication [§ 11.317]
 - c. User, Custodian, and Terms-of-Service Agreement [§ 11.318]
 - d. Catalogue and Content [§ 11.319]
 - e. Online Tool and Designated Recipient [§ 11.320]
 - 3. Applicability [§ 11.321]
 - 4. Prioritization [§ 11.322]
 - 5. Disclosure to Fiduciaries [§ 11.323]
 - a. In General [§ 11.324]
 - b. Personal Representative [§ 11.325]
 - c. Agent Under a Financial Power of Attorney [§ 11.326]
 - d. Trustee [§ 11.327]
 - e. Guardian or Conservator [§ 11.328]
- C. Estate Planning Considerations [§ 11.329]

Table of Cases

Table of Statutes, Regulations, and Rules

Forms Index

Subject Index

