

Contents

PART I—ESTATE PLANNING: A PRACTICE-ORIENTED APPROACH

CHAPTER 1: HOW TO USE THIS BOOK 1-1

1.1	Evolution of the Federal Estate Tax Exemption	1-1
1.1A	Locating the Proper Form and Use of Accompanying Materials	1-2.1
1.2	The Three Major Will and Trust Forms Headings	1-2.2
1.3	Wills as Primary Testamentary Instruments—Five Categories	1-2.2
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—for Married Client	2-3
	*Form 2-2: Estate Planning Questionnaire—for Married Client	2-4
	*Form 2-2A: Estate Planning Questionnaire—for Single Client	2-12
2.2.3	Effective Gathering of Client Information: The Client Estate Planning Questionnaire	2-17
2.2.3.1	Family Information	2-18
2.2.3.2	Assets and Liabilities	2-18
2.2.4	Initial Client Meeting	2-18
2.2.4.1	Information Gathering	2-18
2.2.4.2	Dispositive Goals	2-19
2.2.4.3	Selection of Fiduciaries and Guardians	2-19
2.2.4.4	Wills vs. Probate Substitutes	2-19

CONTENTS

2.3 Nature and Scope of the Estate Planning Engagement and Attorney’s Fee . . . 2-20

2.3.1 Discussing the Engagement and Fee 2-20

 *Form 2-4: Engagement/Fee Letter with Dual Representation Provisions 2-20

2.3.2 Establishing the Fee 2-23

2.3.3 Ethical Issues in Representing Both Husband and Wife 2-23

PART II—SIMPLE WILLS: FOR MARRIED COUPLES WITH COMBINED ESTATES NOT EXCEEDING ESTATE TAX EXEMPTION

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 Pure “Sweetheart” Wills—Outright to Spouse 3-2

3.2.1 Summary of Dispositive Provisions 3-2

3.2.2 When to Use These Wills 3-2.1

3.2.3 Estate Tax Consequences 3-2.1

3.2.4 Forms for Simple “Sweetheart” Wills 3-3

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

 Form SW-1W: Companion Will to SW-1H 3-3

3.2.5 Key Action Subjects for Strategic Planning 3-9

3.3 Sweetheart/Trust Wills—to Spouse in Trust without Tax Planning 3-9

3.3.1 Overall Summary of Dispositive Provisions 3-9

3.3.2 Terms of Marital Trusts—How They Work 3-10

3.3.3 When to Use These Wills 3-11

3.3.4 Comparison of Marital/QTIP vs. Marital/Power of Appointment (POA) Trust 3-11

3.3.4.1 Marital/QTIP Trust 3-11

3.3.4.2 Marital/POA Trust 3-12

3.3.5 Estate Tax Consequences 3-12

3.3.6 Forms for “Sweetheart/Trust” Wills 3-12

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

 Form SW-2W: Companion Will to SW-2H 3-12

 Form SW-3H: Husband with Adult Children: Gift of Residuary Estate to Marital POA Trust,

	for Benefit of Spouse for Life, Remainder to Distributees Appointed by Surviving Spouse; upon Failure to Exercise Power, Remainder to Adult Children; if Spouse Does Not Survive, Outright to Adult Children.	3-12
	Form SW-3W: Companion Will to SW-3H.	3-12
	*Form SW-2/3: Template Simple Will Form for Testator with Adult Children with Alternative Dispositive Provisions for Marital Trust (QTIP or POA)	3-13
3.3.7	Key Action Subjects for Strategic Planning	3-26
3.4	Wills Disposing Property Outright to Children (No Provision for Spouse).	3-26
3.4.1	Summary of Dispositive Provisions	3-26
3.4.2	When to Use These Wills	3-27
3.4.3	Estate Tax Consequences	3-27
3.4.4	Caution: Spouse’s Right of Election in Minnesota	3-27
3.4.5	Will Forms for Outright Disposition to Children	3-28
	*Form SW-4H: 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.	3-28
	Form SW-4W: Companion Will to SW-4H.	3-28
3.4.6	Key Action Subjects for Strategic Planning	3-33
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	4-2
4.2	Pure “Sweetheart” Wills—to Spouse Outright, with Contingent Trusts for Children	4-3
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	4-4
4.2.4	When to Use These Wills	4-4
4.2.5	Estate Tax Consequences	4-5
4.2.6	Forms for “Sweetheart” Wills with Contingent Trusts for Children.	4-5
	Form SW-5H: Husband with Minor Children: Outright Gift of Residuary Estate to Spouse, if Surviving;	

CONTENTS

	if Not, to Separate Trusts for Children— Complete Distribution at Age 30.	4-5
Form SW-5W:	Companion Will to SW-5H.	4-5
Form SW-6H:	Outright Gift of Residuary Estate to Spouse, if Surviving; if Not, to Pot Trust for Children— until Youngest Child Attains Age of 25.	4-5
Form SW-6W:	Companion Will to SW-6H.	4-5
*Form SW-5/6:	Template Simple Will Form for Testator with Minor Children with Alternative Dispositive Provisions for Children’s Trusts (Separate Trusts or Pot Trust)	4-5
4.2.7	Key Action Subjects for Strategic Planning	4-18
4.3	Sweetheart/Trust Wills—to Spouse in Trust with Contingent Trusts for Children	4-19
4.3.1	Summary of Dispositive Provisions	4-19
4.3.2	Dispositive Terms of Marital Trusts	4-20
4.3.3	Distribution Alternatives for Children’s Trusts	4-21
4.3.4	When to Use These Wills	4-21
4.3.5	Comparison of Marital/QTIP vs. Marital/POA Trust	4-21
4.3.6	Estate Tax Consequences	4-22
4.3.7	Forms for “Sweetheart Trust” Wills with Children’s Trusts	4-22
Form SW-7H:	Husband with Minor Children: Gift of Residuary Estate to Marital (QTIP) Trust for Benefit of Spouse for Life, Remainder to Separate Trusts for Children—Complete Distribution at Age 30; if Spouse Does Not Survive, to Separate Trusts for Children— Complete Distribution at Age 30.	4-22
Form SW-7W:	Companion Will to SW-7H.	4-22
Form SW-8H:	Husband with Minor Children: Gift of Residuary Estate to Marital (QTIP) Trust for Benefit of Spouse for Life, Remainder to Pot Trust for Children—Complete Distribution when Youngest Child Attains Age 25; if Spouse Does Not Survive, to Children’s Pot Trust	4-22
Form SW-8W:	Companion Will to SW-8H.	4-22
Form SW-9H:	Husband with Minor Children: Gift of Residuary Estate to Marital Power of Appointment Trust for Benefit of Spouse for Life, Remainder to Distributees Appointed by Surviving Spouse; upon Failure to Exercise Power, Remainder to Children in Separate Trusts—Complete Distribution at	

	Age 30; if Spouse Does Not Survive, to Separate Trusts for Children— Complete Distribution at Age 30	4-22
Form SW-9W:	Companion Will to SW-9H	4-22.1
Form SW-10H:	Husband with Minor Children: Gift of Residuary Estate to Marital Power of Appointment Trust for Benefit of Wife for Life, Remainder to Distributees Appointed by Surviving Spouse; upon Failure to Exercise Power, Remainder to Children in Pot Trust until Youngest Child Attains Age 25; if Wife Does Not Survive, to Pot Trust until Youngest Child Attains Age 25	4-22.1
Form SW-10W:	Companion Will to SW-10H	4-22.1
*Form SW-7-10:	Template Simple Will Form for Testator with Minor Children with Alternative Dispositive Clauses for Marital Trusts for Spouse and Trust for Children	4-23
4.3.8	Key Action Subjects for Strategic Planning	4-38
4.4	Wills Disposing Property Outright to Trust for Minor Children (No Provision for Spouse)	4-39
4.4.1	Summary of Dispositive Provisions	4-39
4.4.2	When to Use These Wills	4-39
4.4.3	Estate Tax Consequences	4-40
4.4.4	Caution: Spouse’s Right of Election in Minnesota	4-40
4.4.5	Forms for Wills Disposing of Property to Trust for Minor Children	4-40
Form SW-11H:	Male Testator with Minor Children Whose Spouse Has Predeceased Him, or Is to Be Given No Interest under Will: Gift of Residuary Estate to Separate Trusts for Children—Complete Distribution at Age 30	4-40
Form SW-11W:	Companion Will to SW-11H	4-40
Form SW-12H:	Male Testator with Minor Children Whose Spouse Has Predeceased Him, or Is to Be Given No Interest under Will: Gift of Residuary Estate to Pot Trust Until Youngest Child Attains Age of 25	4-40
Form SW-12W:	Companion Will to SW-12H	4-41
*Form SW-11/12:	Template Simple Will Form with Alternative Dispositive Clauses for Testator with Minor Children, Whose Spouse Has Predeceased Him, or Is to be Given No Interest under	

CONTENTS

Will; Gift of Residuary Estate for Children
(Separate Trusts or Pot Trust) 4-41

4.4.6 Key Action Subjects for Strategic Planning 4-53

**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 ESTATE TAX
EXEMPTION**

**CHAPTER 5: STRATEGIC PLANNING WITH CREDIT
SHELTER/BYPASS TRUSTS 5-1**

5.1 Effective Utilization of Estate Tax Exemption Through Trusts 5-1

5.2 Workings of the Bypass Trust 5-3

5.3 Alternatives for Structuring Bypass Trust 5-4

5.4 Using a Bypass Trust with a Limited Power of Appointment to
Allow for Disclaimer 5-5

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 MARITAL BEQUEST (OUTRIGHT)
—FOR MARRIED COUPLES WITH COMBINED
ESTATES EXCEEDING ESTATE TAX
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 6-5

Form TP-1H: Marital Bequest Outright to Spouse; Credit
Shelter Bequest to Residuary/Bypass Trust
with Income and Principal to Spouse,
Remainder (or Entire Estate if Spouse
Does Not Survive) to Living Descendants,
per stirpes 6-5

Form TP-1W: Companion Will to TP-1H 6-5

Form TP-2H: Marital Bequest Outright to Spouse; Credit
Shelter Bequest to Residuary/Bypass Trust
with Spray of Income and Principal to

		Spouse and Children, Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, <i>per stirpes</i>	6-5
	Form TP-2W:	Companion Will to TP-2H	6-5
	Form TP-3H:	Marital Bequest Outright to Spouse; Credit Shelter Bequest to Residuary/Bypass Trust with Income to Spouse, Spray of Principal to Spouse and Children, Remainder (or Entire Estate if Spouse does not survive) to Living Descendants, <i>per stirpes</i>	6-5
	Form TP-3W:	Companion Will to TP-3H	6-5
	*Form TP-1-3:	Template Form for Testator with Adult Children: with Alternative Dispositive Methods for Residuary/Bypass Trust.	6-5
	6.1.7	Client Presentation Charts for TP-1, TP-2, and TP-3	6-17
	6.1.8	Key Action Subjects for Strategic Planning	6-19
6.2		Wills with Bypass Trust and Outright Marital Bequest for Married Couples with Minor Children	6-20
	6.2.1	General Description of Wills	6-20
	6.2.2	Overall Summary of Dispositive Provisions	6-21
	6.2.3	Graphic Summary of Dispositive Provisions of Credit Shelter/Bypass Trust and Estate Tax Effects	6-21
	6.2.4	When to Use These Wills	6-27
	6.2.5	Estate Tax Consequences	6-27
	6.2.6	Forms for Bypass Trust and Outright Marital—with Trusts for Children	6-28
	Form TP-4H:	Marital Bequest Outright to Spouse; Credit Shelter Bequest to Residuary/Bypass Trust with Income and Principal to Spouse, Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, <i>per stirpes</i> (Separate Trusts for Descendants under 30)	6-28
	Form TP-4W:	Companion Will to TP-4H	6-28
	Form TP-5H:	Marital Bequest Outright to Spouse; Credit Shelter Bequest to Residuary/Bypass Trust with Spray of Income and Principal to Spouse and Children, Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, <i>per stirpes</i> (Separate Trusts for Descendants under 30)	6-28
	Form TP-5W:	Companion Will to TP-5H	6-28
	Form TP-6H:	Marital Bequest Outright to Spouse; Credit Shelter Bequest to Residuary/Bypass Trust with Income to Spouse and Spray of Principal to Spouse and Children,	

CONTENTS

	Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, <i>per stirpes</i> (Separate Trusts for Descendants under 30)	6-28
Form TP-6W:	Companion Will to TP-6H	6-28
Form TP-7H:	Marital Bequest Outright to Spouse; Credit Shelter Bequest to Residuary/Bypass Trust with Income and Principal to Spouse, remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, <i>per stirpes</i> (Pot Trust until Youngest Child Attains 25)	6-28
Form TP-7W:	Companion Will to TP-7H	6-28
Form TP-8H:	Marital Bequest Outright to Spouse; Credit Shelter Bequest to Residuary/Bypass Trust with Spray of Income and Principal to Spouse and Children, Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, <i>per stirpes</i> (Pot Trust until Youngest Child Attains 25)	6-28
Form TP-8W:	Companion Will to TP-8H	6-28
Form TP-9H:	Marital Bequest Outright to Spouse; Credit Shelter Bequest to Residuary/Bypass Trust with Income to Spouse and Spray of Principal to Spouse and Children, Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, <i>per stirpes</i> (Pot Trust until Youngest Child Attains 25)	6-29
Form TP-9W:	Companion Will to TP-9H	6-29
*Form TP-4-9:	Template Form for Testator with Minor Children: with Alternative Dispositive Methods for Residuary/Bypass Trust and Trust for Children	6-29
6.2.7	Client Presentation Charts for TP-4, TP-5, TP-6, TP-7, TP-8, and TP-9	6-44
6.2.8	Key Action Subjects for Strategic Planning	6-51

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	7-2

7.3 The Unlimited Marital Deduction and Strategic Planning with QTIP Trusts 7-2

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 ESTATE TAX 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 8-2

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

8.1.5 Estate Tax Consequences 8-2.1

8.1.6 Form Wills with QTIP and Bypass Trusts—Married Couple with Adult Children 8-3

Form TP-10H: Marital Bequest to QTIP Trust; Credit Shelter Bequest to Residuary/Bypass Trust with Income and Principal to Spouse; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* 8-3

Form TP -10W: Companion Will to TP-10H 8-3

Form TP-11H: Marital Bequest to QTIP Trust; Credit Shelter Bequest to Residuary/Bypass Trust with Spray of Income and Principal to Spouse and Children; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* 8-3

Form TP-11W: Companion Will to TP-11H 8-3

Form TP-12H: Marital Bequest to QTIP Trust; Credit Shelter Bequest to Residuary/Bypass Trust with Income to Spouse, Spray of Principal to Spouse and Children; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* 8-3

Form TP-12W: Companion Will to TP-12H 8-3

*Form TP-10-12: Template Form for Testator with Adult Children: Marital (QTIP) Trust with Alternative Dispositive Methods for Residuary/Bypass Trust 8-4

8.1.7 Client Presentation Charts for TP-10, TP-11, and TP-12 8-17

8.1.8 Key Action Subjects for Strategic Planning 8-21

CONTENTS

8.2 Wills with QTIP and Bypass Trusts—Married Couples with Minor Children 8-21

8.2.1 General Description of Wills 8-21

8.2.2 Summary of Dispositive Provisions 8-22

8.2.3 Summary of Dispositive Provisions and Tax Effects of Marital and Credit Shelter/Bypass Trusts 8-22

8.2.4 When to Use These Wills 8-23

8.2.5 Estate Tax Consequences 8-23

8.2.6 Form Wills with QTIP and Bypass Trust—for Married Couples with Minor Children 8-24

Form TP-13H: Marital Bequest to QTIP Trust; Credit Shelter Bequest to Residuary/Bypass Trust with Income and Principal to Spouse; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* (Separate Trusts for Descendants under 30) 8-24

Form TP-13W: Companion Will to TP-13H 8-24

Form TP-14H: Marital Bequest to QTIP Trust; Credit Shelter Bequest to Residuary/Bypass Trust with Spray of Income and Principal to Spouse and Children; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* (Separate Trusts for Descendants under 30) 8-24

Form TP-14W: Companion Will to TP-14H 8-24

Form TP-15H: Marital bequest to QTIP Trust; Credit Shelter Bequest to Residuary/Bypass Trust with Income to Spouse and Spray of Principal to Spouse and Children; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* (Separate Trusts for Descendants under 30) 8-24

Form TP-15W: Companion Will to TP-15H 8-24

Form TP-16H: Marital Bequest to QTIP Trust; Credit Shelter Bequest to Residuary/Bypass Trust with Income and Principal to Spouse; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* (Pot Trust until Youngest Child Attains 25) 8-24

Form TP-16W: Companion Will to TP-16H 8-25

Form TP-17H: Marital Bequest to QTIP Trust; Credit Shelter Bequest to Residuary/Bypass Trust with Spray of Income and Principal to Spouse and Children; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per*

	<i>stirpes</i> (Pot Trust until Youngest Child Attains 25)	8-25
Form TP-17W:	Companion Will to TP-17H	8-25
Form TP-18H:	Marital Bequest to QTIP Trust; Credit Shelter Bequest to Residuary/Bypass Trust with Income to Spouse and Spray of Principal to Spouse and Children; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, <i>per stirpes</i> (Pot Trust until Youngest Child Attains 25)	8-25
Form TP-18W:	Companion Will to TP-18H	8-25
*Form TP-13-18:	Template Form for Testator with Minor Children: with QTIP Trust and Alternative Dispositive Methods for Residuary/Bypass Trust and for Trusts for Children	8-25
8.2.7	Client Presentation Charts for TP-13, TP-14, TP-15, TP-16, TP-17, and TP-18	8-41
8.2.8	Key Action Subjects for Strategic Planning	8-52
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) WHERE ONE SPOUSE HAS ESTATE SIGNIFICANTLY IN EXCESS OF ESTATE TAX EXEMPTION	9-1
9.1	Overview and Practical Considerations	9-1
9.2	“Reverse Pecuniary” Wills with Bypass Trust and Outright Marital Bequest—Married Couples with Adult Children	9-2
9.2.1	General Description of Wills	9-2
9.2.2	Summary of Dispositive Provisions	9-3
9.2.3	When to Use These Wills	9-3
9.2.4	Estate Tax Consequences	9-4
9.2.5	Form Reverse Pecuniary Wills with Bypass Trust and Outright Marital Bequest.	9-4
	Form TP-19W: Companion Will to TP-19H	9-4
	*Form TP-19H: Pecuniary Credit Shelter Bequest to Bypass Trust for Benefit of Spouse and Children; Marital Bequest Outright to Spouse; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, <i>per stirpes</i>	9-4.1
9.2.6	Client Presentation Chart for TP-19	9-14
9.3	“Reverse Pecuniary” Wills for Married Couples with Adult Children (with QTIP Trust)	9-15

CONTENTS

9.3.1 General Description of Wills 9-15

9.3.2 Summary of Dispositive Provisions 9-16

9.3.3 When to Use These Wills 9-16

9.3.4 Estate Tax Consequences 9-17

9.3.5 Form Reverse Pecuniary Wills with QTIP and Bypass Trusts 9-17

 Form TP-20W: Companion Will to TP-20H 9-17

 *Form TP-20H: Pecuniary Credit Shelter Bequest to Bypass Trust; Marital Bequest to QTIP Trust; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* 9-18

9.3.6 Client Presentation Chart for TP-20 9-30

9.4 “Reverse Pecuniary” Wills with Bypass Trust and Outright Marital Bequest for Married Couples with Minor Children 9-31

9.4.1 General Description of Wills 9-31

9.4.2 Summary of Dispositive Provisions 9-32

9.4.3 When to Use These Wills 9-32

9.4.4 Estate Tax Consequences 9-33

9.4.5 Form Reverse Pecuniary Wills with Bypass Trust and Outright Marital Bequest 9-34

 Form TP-21H: Pecuniary Credit Shelter Bequest to Bypass Trust for Benefit of Spouse and Children; Marital Bequest Outright to Spouse; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* (Separate Trusts for Children under 30) 9-34

 Form TP-21W: Companion Will to TP-21H 9-34

 Form TP-22H: Pecuniary Credit Shelter Bequest to Bypass Trust for Benefit of Spouse and Children; Marital Bequest Outright to Spouse; Remainder (or Entire Estate if Spouse Does Not Survive) to Pot Trust until Youngest Child Attains 25 9-34

 Form TP-22W: Companion Will to TP-22H 9-34

 *Form TP-21/22: Template Form for Married Testator with Minor Children; Pecuniary Credit Shelter Bequests to Bypass Trust and Outright Marital Bequest with Alternative Clauses for Children’s Trusts (Separate Trusts or Pot Trust) 9-34

9.4.6 Client Presentation Charts for TP-21 and TP-22 9-48

9.5 “Reverse Pecuniary” Wills for Married Couples with Minor Children (with QTIP Trust) 9-50

9.5.1 General Description of Wills 9-50

9.5.2 Summary of Dispositive Provisions 9-51

9.5.3 When to Use These Wills 9-51

9.5.4 Estate Tax Consequences 9-52

9.5.5 Form Reverse Pecuniary Wills with QTIP and Bypass Trusts . . . 9-52.1

Form TP-23H: Pecuniary Credit Shelter Bequest to Bypass Trust; Marital Bequest to QTIP Trust; Remainder of Trusts (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* (Separate Trusts for Children under 30) 9-52.1

Form TP-23W: Companion Will to TP-23H 9-53

Form TP-24H: Pecuniary Credit Shelter Bequest to Bypass Trust; Marital Bequest to QTIP Trust; Remainder of Trusts (or Entire Estate if Spouse Does Not Survive) to Pot Trust until Youngest Child Attains 25 9-53

Form TP-24W: Companion Will to TP-24H 9-53

*Form TP-23/24: Template Form for Married Testator with Minor Children; Pecuniary Credit Shelter Bequest to Bypass Trust; Marital Bequest to QTIP Trust; Alternative Clauses for Children’s Trusts (Separate Trusts or Pot Trust). 9-53

9.5.6 Client Presentation Charts for TP-23 and TP-24. 9-68

9.5.7 Key Action Subjects for Strategic Planning 9-72

PART IV—“FLEXIBLE” TAX PLANNING WILLS WITH DISCLAIMER TRUSTS: MARRIED COUPLES WITH COMBINED ESTATES APPROACHING OR EXPECTED TO EXCEED ESTATE TAX EXEMPTION OR WHO DESIRE A FLEXIBLE APPROACH

CHAPTER 10 STRATEGIC PLANNING WITH “FLEXIBLE” DISCLAIMER TRUSTS 10-1

10.1 Overview of the Disclaimer Trust Technique 10-1

10.2 Requirements of a Qualified Disclaimer 10-2

10.2.1 Federal Tax Requirements and Consequences 10-2

10.3 When Is a Disclaimer Used—in General 10-5

10.4 The Flexible Disclaimer Trust Solution 10-5

10.5 Some Pitfalls and Disadvantages of Disclaimer Approach 10-6

10.6 Increased Use of Disclaimer Trusts In Light of Minnesota’s “Decoupled” Estate Tax 10-7

CHAPTER 11 TAX PLANNING WILLS WITH DISCLAIMER TRUSTS . . . 11-1

11.1 Disclaimer Wills For Married Couples with Adult Children 11-1

11.1.1 Summary of Dispositive Provisions 11-1

11.1.2 Summary of Dispositive Provisions and Tax Effects of Disclaimer Trust 11-2

CONTENTS

11.1.3 When to Use These Wills 11-3

11.1.4 Estate Tax Consequences 11-4

11.1.5 Form Wills with Disclaimer Trusts for Married Couples
with Adult Children 11-4

 Form DW-1H: Gift of Residuary Estate Outright to Spouse
with Disclaimer Option to “Disclaimer Trust”
for Benefit of Spouse, Remainder (or Entire
Estate if Spouse Does Not Survive) to Living
Descendants, *per stirpes* 11-4

 Form DW-1W: Companion Will to DW-1H. 11-4

 Form DW-2H: Gift of Residuary Estate Outright to Spouse
with Disclaimer Option to “Disclaimer Trust”
for Benefit of Spouse and Descendants
during Spouse’s Life (Preference to
Spouse), Remainder (or Entire Estate if
Spouse Does Not Survive) to Living
Descendants, *per stirpes* 11-4

 Form DW-2W: Companion Will to DW-2H. 11-4

 Form DW-3H: Gift of Residuary Estate Outright to Spouse
with Disclaimer Option to “Disclaimer Trust”
(Income to Spouse, Spray of Principal to Spouse
and Descendants), Remainder (or Entire Estate if
Spouse Does Not Survive) to Living
Descendants, *per stirpes* 11-4

 Form DW-3W: Companion Will to DW-3H. 11-4.1

 *Form DW-1-3: Template Form for Married Testator with
Adult Children: Will with “Disclaimer
Trust” with Alternative Methods for Trust
Distributions 11-5

11.1.6 Key Action Subjects for Strategic Planning 11-16

11.2 Disclaimer Wills for Married Couples with Minor Children 11-17

 11.2.1 Dispositive Provisions of Wills in Category 11-17

 11.2.2 Summary of Dispositive Provisions and Tax Effects of
Disclaimer Trust 11-17

 11.2.3 When to Use These Wills 11-22

 11.2.4 Estate Tax Consequences 11-22

 11.2.5 Form Wills with Disclaimer Trusts for Married Couples
with Minor Children 11-23

 Form DW-4H: Gift of Residuary Estate Outright to Spouse
with Disclaimer Option to “Disclaimer Trust”
for Benefit of Spouse, Remainder (or Entire
Estate if Spouse Does Not Survive) to Living
Descendants, *per stirpes* (Separate Trusts for
Descendants under 30) 11-23

Form DW-4W: Companion Will to DW-4H. 11-23

Form DW-5H: Gift of Residuary Estate Outright to Spouse with Disclaimer Option to “Disclaimer Trust”—Spray of Income and Principal to Spouse and Descendants; Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* (Separate Trusts for Descendants under 30) 11-23

Form DW-5W: Companion Will to DW-5H. 11-23

Form DW-6H: Gift of Residuary Estate Outright to Spouse with Disclaimer Option to “Disclaimer Trust”—Income to Spouse, Spray of Principal to Spouse and Children, Remainder (or Entire Estate if Spouse Does Not Survive) to Living Descendants, *per stirpes* (Separate Trusts for Descendants under 30) 11-23

Form DW-6W: Companion Will to DW-6H. 11-23

Form DW-7H: Gift of Residuary Estate Outright to Spouse with Disclaimer Option to “Disclaimer Trust” for Benefit of Spouse, Remainder (or Entire Estate if Spouse Does Not Survive) to Pot Trust until Youngest Child Attains 25 11-24

Form DW-7W: Companion Will DW-7H. 11-24

Form DW-8H: Gift of Residuary Estate Outright to Spouse with Disclaimer Option to “Disclaimer Trust”—Spray of Income and Principal to Spouse and Descendants; Remainder (or Entire Estate if Spouse Does Not Survive) to Pot Trust until Youngest Child Attains 25. 11-24

Form DW-8W: Companion Will to DW-8H. 11-24

Form DW-9H: Gift of Residuary Estate Outright to Spouse with Disclaimer Option to “Disclaimer Trust”—Income to Spouse, Spray of Principal to Spouse and Descendants; Remainder (or Entire Estate if Spouse Does Not Survive) to Pot Trust until Youngest Child Attains 25. 11-24

Form DW-9W: Companion Will to DW-9H. 11-24

*Form DW-4-9: Template Form for Married Testator with Minor Children with “Disclaimer Trust” with Alternative Methods for Distribution during Lifetime of Spouse and Alternative Children’s Trusts 11-24

11.2.6 Key Action Subjects for Strategic Planning 11-40

**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 12-2

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 The “Reverse QTIP” Election: Allocating First Spouse’s GST
Exemption to Marital Trust 12-6

12.7 Use of the First Spouse’s Nonexempt Marital Trust to Allocate
GST Exemption of Surviving Spouse 12-7

**CHAPTER 13 TAX PLANNING WILLS 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 Wills..... 13-1

13.1.2 Summary of Dispositive Provisions 13-1

13.1.3 Form Wills with Generation-Skipping Trust..... 13-4

*Form GST-1H: Marital Bequest Divided into Exempt GST and
Nonexempt Trusts; Credit Shelter Bequest to
Exempt Bypass GST for Benefit of Spouse and
Children; Remainder—Exempt Trusts to Separate
GST Trusts for Children, Nonexempt to
Living Descendants, *per stirpes* 13-4

Form GST-1W: Companion Will to GST-1H 13-4

*Form GST-2H: Marital Bequest Divided into Exempt GST and
Nonexempt Trusts; Credit Shelter Bequest to
Exempt Bypass GST Trust for Benefit of Spouse
and Children; Remainder—Exempt Trusts to
Separate GST Trusts for Children; Nonexempt
to Living Descendants, *per stirpes* (with
Flexibility for Distribution of Remainder of
Nonexempt Trust to Children’s GST Trusts). . . . 13-4

Form GST-2W: Companion Will to GST-2H 13-4

Form GST-3H: Marital Bequest Divided into Exempt GST
and Nonexempt Trusts; Credit Shelter
Bequest to Separate Exempt GST Trusts
for Children; Remainder—Exempt Marital

	to Exempt Children’s Trusts, Nonexempt Trust to Living Descendants, <i>per stirpes</i>	13-4
Form GST-3W:	Companion Will to GST-3H	13-4
Form GST-4H:	Marital Bequest Divided into Exempt GST and Nonexempt Trusts; Credit Shelter Bequest to Separate Exempt GST Trusts for Children; Remainder of Exempt Trusts to Exempt Children’s Trusts, Nonexempt to Living Descendants, <i>per stirpes</i> (with Flexibility for Distribution of Remainder of Nonexempt Trust to Children’s GST Trusts)	13-4
Form GST-4W:	Companion Will to GST-4H	13-4
Form GST-5H:	Marital Bequest Divided into Exempt GST and Nonexempt Trusts; Credit Shelter Bequest to Exempt GST Bypass Trust for Benefit of Spouse and Children; Remainder—Exempt Trusts to GST Spray Trust for Children and Descendants, Nonexempt to Living Descendants, <i>per stirpes</i>	13-4
Form GST-5W:	Companion Will to GST-5H	13-5
Form GST-6H:	Marital Bequest Divided into Exempt GST and Nonexempt Trusts; Credit Shelter Bequest to Exempt GST Bypass Trust for Benefit of Spouse and Children; Remainder—Exempt Trusts to GST Spray Trust for Children and Descendants, Nonexempt to Living Descendants, <i>per stirpes</i> (with Flexibility for Distribution of Remainder of Nonexempt Trust to Children’s GST Trusts)	13-5
Form GST-6W:	Companion Will to GST-6H	13-5
Form GST-7H:	Marital Bequest Divided into Exempt and Nonexempt Trusts; Credit Shelter Bequest to Spray GST Trust for Descendants; Remainder—Exempt Marital to Descendant’s Trust; Remainder of Nonexempt Trust to Living Descendants, <i>per stirpes</i>	13-5
Form GST-7W:	Companion Will to GST-7H	13-5
Form GST-8H:	Marital Bequest Divided into Exempt and Nonexempt Trusts; Credit Shelter Bequest to Spray GST Trust for Descendants; Remainder—Exempt Marital to Descendant’s Trust; Remainder of Nonexempt Trust to Living Descendants, <i>per stirpes</i> (with Flexibility for Distribution of Remainder of Nonexempt Trust to Children’s GST Trusts)	13-5
Form GST-8W:	Companion Will to GST-8H	13-5

CONTENTS

13.1.4 Client Presentation Charts for All GST Wills 13-38
13.1.5 Key Action Subjects for Strategic Planning 13-68

**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 14-3
14.2.3 Estate Tax Consequences 14-3
14.2.4 Form Simple Wills for Unmarried Persons with Adult
Children. 14-3
 *Form UM-1M: Unmarried Male Testator with Adult
 Children: Outright Gift of Residuary
 Estate to Adult Children 14-3
 Form UM-1F: Corresponding Will to UM-1M for
 Testatrix. 14-3
14.3 Wills for Unmarried Persons with Minor Children 14-9
14.3.1 Summary of Dispositive Provisions 14-9
14.3.2 Distribution of Separate Trusts for Children. 14-9
14.3.3 Distribution of Pot Trusts for Children 14-9
14.3.4 When to Use These Wills 14-10
14.3.5 Estate Tax Consequences 14-10
14.3.6 Form Simple Wills for Unmarried Persons with Minor
Children. 14-10
 Form UM-2M: Unmarried Male Testator with Minor
 Children: Gift of Residuary Estate to
 Separate Trusts for Children—Complete
 Distribution at Age 30. 14-10
 Form UM-2F: Corresponding Will to UM-2M for
 Testatrix. 14-10
 Form UM-3M: Unmarried Male Testator with Minor
 Children: Gift of Residuary Estate to
 Pot Trust until Youngest Child Reaches 25. 14-11
 Form UM-3F: Corresponding Will to UM-3M for
 Testatrix. 14-11
 *Form UM-2/3: Template Form for Unmarried Testator with
 Minor Children with Alternative Dispositive
 Methods of Residuary Estate Clauses for
 Separate Trusts and Pot Trust 14-11
14.4 Will for Unmarried Individuals without Children 14-23

14.4.1 Overview 14-23

14.4.2 Summary of Dispositive Provisions 14-23

14.4.3 When to Use These Wills 14-23

14.4.4 Estate Tax Consequences 14-23

14.4.5 Form Wills for Unmarried Individuals without Children 14-24

*Form UM-4M: Unmarried 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) 14-24

Form UM-4F: Corresponding Will to UM-4M for
Testatrix 14-24

14.5 Pour-Over Will to Revocable Trust 14-35

14.5.1 Summary of Dispositive Provisions 14-35

14.5.2 When to Use These Wills 14-35

14.5.3 Estate Tax Consequences 14-35

14.5.4 Form Pour-Over Will 14-36

*Form UM-5M: Will for Unmarried Male Testator Pour-Over
Will—to Revocable Trust Created During
Lifetime 14-36

Form UM-5F: Corresponding Will to UM-5M for
Unmarried Testatrix 14-36

14.6 Wills for Single Individuals with Generation-Skipping Trusts 14-41

14.6.1 Overview 14-41

14.6.2 Overall Summary of Dispositive Provisions 14-42

14.6.3 Objective of GST Wills for Unmarrieds 14-42

14.6.4 Detailed Summary of Dispositive Provisions of GST
Trusts 14-42

14.6.5 When to Use These Wills 14-43

14.6.6 Form Wills for Unmarried Individuals with
Generation-Skipping Trusts 14-44

Form UM-6M: Unmarried Testator with Adult Children:
Residuary Bequest to Be Divided into:
(1) Exempt Portion—Separate Generation—
Skipping Trusts for Children, Remainder to
Grandchildren with Limited Power of
Appointment to Children; and (2) Nonexempt
Portion—Outright to Living Descendants,
per stirpes 14-44

Form UM-6F: Corresponding Will to UM-6M for Testatrix . . 14-44

Form UM-7M: Unmarried Testator with Adult Children:
Residuary Bequest to Be Divided into:
(1) Exempt Portion—Separate
Generation-Skipping Trusts for Benefit
of Each Child and Child’s Descendants

CONTENTS

During Lifetime of Child, Remainder to Grandchildren with Limited Power of Appointment to Children; and (2) Nonexempt Portion—Outright to Living Descendants, *per stirpes* 14-44

Form UM-7F: Corresponding Will to UM-7M for Unmarried Testatrix 14-44

*Form UM-6/7: Template Will Forms for Unmarried Testator with Adult Children: with Alternative Dispositive Methods for Residuary Bequest—Division between Exempt and Nonexempt Portions 14-44

14.6.7 Key Action Subjects for Strategic Planning 14-58

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 Probate Avoidance 15-1

15.1.2.2 Estate and Income Taxes 15-2

15.1.2.3 Planning for Incapacity 15-3

15.1.2.4 Ancillary Administration: Real Estate in More than One State 15-3

15.1.2.5 Potential for Will Contests 15-3

15.1.3 Summary 15-3

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 Settlor and upon Death. 15-4

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 15-5

15.2.7 Pour-Over Will 15-5

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) 16-3

16.2.1 Summary of Dispositive Provisions of RT-1 16-3

16.2.2 When to Use This Revocable Trust (RT-1) 16-3

16.2.3 Income, Gift, and Estate Tax Consequences 16-3

16.2.4 Forms 16-4

*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 16-11

16.3 Revocable Trust and Pour-Over Will for Unmarried Individuals
without Children (RT-2 and PO-2) 16-16

16.3.1 Summary of Dispositive Provisions of RT-2 16-16

16.3.2 When to Use This Revocable Trust (RT-2) 16-17

16.3.3 Income, Gift, and Estate Tax Consequences 16-17

16.3.4 Forms 16-18

*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) 16-18

*Form PO-2: For Unmarried Testator/Testatrix: Pour-Over
Will—to Accompany RT-2 16-28

16.4 Revocable Trusts and Pour-Over Wills for Unmarried Individuals
with Children—with Generation-Skipping Trusts (RT-3 and PO-3) 16-34

16.4.1 Summary of Dispositive Provisions of RT-3 16-34

16.4.2 Objective of GST Provisions for Unmarrieds 16-34

16.4.3 Detailed Summary and Estate Tax Effects of Dispositive
Provisions of GST-Exempt Trusts (after Settlor’s Death)
under RT-3 16-35

16.4.4 When to Use These Revocable Trusts (RT-3) 16-35

16.4.5 Forms 16-36

*Form RT-3: Revocable Trust Agreement for
Unmarried Individual with Adult
Children—with GST Trusts for Children
upon Death of Settlor 16-36

*Form PO-3: For Unmarried Testator/Testatrix:
Pour-Over Will—to Accompany RT-3 16-47

CONTENTS

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

17.1 Overview and Practical Considerations 17-1
17.2 Summary of Dispositive Provisions of RT-5 17-2
17.3 When to Use This Revocable Trust (RT-5). 17-2
17.4 Income, Gift, and Estate Tax Consequences 17-3
17.5 Forms 17-4
 *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) 17-4
 *Form PO-5-9: For Married Testator/Testatrix: Pour-Over Will—to
 Accompany RT-5-9 17-13

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

18.1 Strategic Planning with Credit Shelter/Bypass Trusts 18-1
18.2 Summary of Dispositive Provisions of RT-6 18-2
18.3 Graphic Summary of Dispositive Provisions of Credit Shelter/Bypass
Trust under RT-6 and Estate Tax Effects 18-3
18.4 Alternatives for Structuring Bypass Trust 18-3
18.5 When to Use Revocable Trust RT-6. 18-4.1
18.6 Income, Gift, and Estate Tax Consequences 18-5
18.7 Forms 18-6
 *Form RT-6: Revocable Trust Agreement for Married Settlor—
 with Credit Shelter/Bypass Trust 18-6
 Form PO-5-9: Pour-Over Will—to Accompany RT-6 18-6

**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 ESTATE TAX EXEMPTION) 19-1**

19.1 Strategic Planning with “A-B” Trust Structure 19-1
19.2 Federal Tax Requirements of QTIP Trust 19-3
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 19-4

19.5 When to Use Revocable Trust RT-7 19-5

19.6 Income, Gift, and Estate Tax Consequences 19-6

19.7 Forms 19-6.1

*Form RT-7: Revocable Trust Agreement for Married Settlor—with
Marital and Bypass Trusts 19-7

*Form PO-5-9: For Married Testator/Testatrix: Pour-Over Will—to
Accompany RT-7 19-19

**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 20-2

20.3 Graphic Summary of Dispositive Provisions of Disclaimer Trust
under RT-8 and Estate Tax Effects 20-3

20.4 When to Use Revocable Trust RT-8 20-3

20.5 Income, Gift, and Estate Tax Consequences 20-4

20.6 When to Use Joint Revocable Trust RT-8(a) 20-4.1

20.7 Forms 20-4.1

*Form RT-8: Revocable Trust Agreement for Married Settlor—
Outright to Spouse with Option for Disclaimer Trust
after Death of Settlor 20-5

*Form RT-8(a): Joint Revocable Trust Agreement for Married
Settlors—with Option for Disclaimer Trust
after Death of First Spouse 20-16

*Form PO-5-9: For Married Testator/Testatrix: Pour-Over Will to
Accompany RT-8 20-16.11

**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 GST Exemption 21-1

21.2 Three-Trust 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 Three Trusts 21-2.1

21.2.2.1 Residuary (Credit Shelter) Trust 21-2.1

21.2.2.2 Exempt and Nonexempt Marital Trusts 21-3

21.3 The “Reverse QTIP” Election 21-4

21.4 Summary of Dispositive Provisions of RT-9 21-6

21.5 Graphic Summary of Dispositive Provisions of Exempt and
Nonexempt Generation-Skipping Trusts under RT-9 and
Estate Tax Effects 21-6

CONTENTS

21.6 When to Use This Revocable Trust (RT-9) 21-10

21.7 Forms 21-10

 *Form RT-9: Revocable Trust Agreement for Married Settlor—
 with Generation-Skipping Trusts 21-10

 *Form PO-5-9: For Married Testator/Testatrix: Pour-Over Will—
 to Accompany RT-9 21-27

PART VIII—STRATEGIC ESTATE PLANNING WITH IRREVOCABLE TRUSTS

CHAPTER 22 IRREVOCABLE LIFE INSURANCE TRUSTS (ILITS) 22-1

22.1 The Life Insurance Trust—a Panacea, Indeed, for Estate Tax Savings 22-1

22.2 Tax Strategies to Make Effective Uses of ILITs: Proper
 Crummey Notices and Avoiding the 3-Year Rule. 22-3

 22.2.1 The “*Crummey*” Notice and the Annual Gift Exclusion. 22-3

 22.2.2 The 3-Year Rule and Strategies for Avoidance 22-4

22.3 The 8-Step Procedure for Establishing and Maintaining a Life
 Insurance Trust 22-5

 *Form 22-1: Checklist for Establishing and Maintaining
 an ILIT 22-6

22.4 Life Insurance Trust on One Life—for Married Settlor 22-7

 22.4.1 Purposes and Uses of ILIT-1 (Standard ILIT) and ILIT-2
 (ILIT with Generation-Skipping Trusts) 22-7

 22.4.2 Graphic Summary of Dispositive Provisions of ILIT-1 and
 ILIT-2 with Estate Tax Effects 22-7

 22.4.3 Forms 22-9

 *Form ILIT-1: Irrevocable Trust Agreement for Married
 Settlor—for Benefit of Spouse and
 Children 22-10

 *Form ILIT-2: Irrevocable Trust Agreement for Married
 Settlor—with Generation-Skipping Trusts
 to Utilize GST Exemption. 22-25

 *Form 22-2: *Crummey* Notice—to Accompany
 Single Life ILITS 22-42

22.5 Life Insurance Trust on One Life—for Unmarried Settlor with
 Children (e.g., Widowed, Divorced). 22-43

 22.5.1 Purposes and Uses of ILIT-3 (Standard ILIT) and ILIT-4
 (ILIT with Generation-Skipping Trusts) 22-43

 22.5.2 Graphic Summary of Dispositive Provisions of ILIT-3 and
 ILIT-4 with Estate Tax Effects 22-43

 22.5.3 Forms 22-44

 *Form ILIT-3: ILIT for Unmarried Settlor—for Benefit
 of Children 22-45

	*Form ILIT-4: ILIT for Unmarried Settlor—with Generation-Skipping Trusts to Utilize GST Exemption.	22-58
	*Form 22-2: <i>Crummey</i> Notice Letter for Single Life Policy—to Accompany ILIT-3 and ILIT-4	22-42
22.6	Life Insurance Trusts on Two Lives (for Second-to-Die Policies)—ILIT-5 and ILIT-6.	22-74
22.6.1	Purposes and Practical Uses of Second-to-Die Policies and Special Requirements	22-74
22.6.2	Graphic Summary of Dispositive Provisions of ILIT-5 (Standard ILIT for Second-to-Die Policy) and ILIT-6 (ILIT for Second-to-Die Policy with Generation-Skipping Trusts)	22-76
22.6.3	Forms.	22-77
	*Form ILIT-5: ILIT for Second-to-Die Policy	22-77
	*Form ILIT-6: ILIT for Second-to-Die Policy with Generation-Skipping Trusts	22-92
	*Form 22-3: Sample <i>Crummey</i> Notice Letter—to Accompany Second-to-Die ILITs.	22-109

CHAPTER 23 STRATEGIC PLANNING WITH IRREVOCABLE TRUSTS. 23-1

23.1	Practical Uses and Overall Comparisons of Trusts with Custodial Transfers and Section 529 Plans.	23-1
23.1.1	Custodial Transfers	23-1
23.1.2	Section 529 Plans	23-2
23.2	Section 2503(c)—Minor’s Trusts.	23-3
23.2.1	Requirements.	23-3
23.2.2	Tax Issues	23-4
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	23-5
	*Form 23-1: Section 2503(c) Minor’s Trust for One Beneficiary Qualifying for Annual Gift Tax Exclusion	23-5
23.3	<i>Crummey</i> Trust	23-15
23.3.1	Requirements and Practical Uses	23-15
23.3.2	Combining <i>Crummey</i> Trust with Generation-Skipping Planning.	23-15
23.3.3	Summary of Dispositive Provisions of Forms for <i>Crummey</i> Trusts.	23-16
23.3.4	Forms for <i>Crummey</i> Trusts	23-18

CONTENTS

*Form 23-2: *Crummey* Trust for One Child with Withdrawal Power—Distribution of Principal to Child at Ages 25, 30, and 35 23-19

*Form 23-3: *Crummey* “Pot” Trust for Children of Settlor with Hanging Withdrawal Powers—Final Distribution of Principal When Youngest Child Attains Age 25 23-29

*Form 23-4: *Crummey* Trust for One Grandchild with Withdrawal Power Qualifying for Annual Exclusion from Gift Tax and GST Tax—Distribution of Principal to Grandchild at Ages 25, 30, and 35 23-40

*Form 23-5: *Crummey* Notice—to Accompany *Crummey* Trusts 23-50

23.4 Intentionally Defective Grantor Trusts (“IDGT”) 23-51

23.4.1 Grantor Trust as a Mainstay of Estate Plans 23-51

23.4.2 A Supercharged Gift 23-51

23.4.3 Achieving “Defective” Grantor Trust Status 23-52

23.4.4 Flexibility to the Grantor in Avoiding Grantor Trust Status 23-53

23.4.5 Form for an IDGT 23-53

*Form 23-6: Intentionally Defective Grantor Trust (Fully Discretionary) 23-53

23.5 Spousal Lifetime Access Trusts (“SLAT”) 23-69

23.5.1 Using SLATs 23-69

23.5.2 Structure of a SLAT 23-69

23.5.3 Caveats to using SLATs 23-69

23.5.4 Forms for SLATs 23-70

*Form 23-7: Spousal Lifetime Access Trust (No GST Provisions) 23-70

*Form 23-8: Spousal Lifetime Access Trust (GST Provisions) 23-86

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

24.5 Forms 24-4

*Form 24-1: Qualified Subchapter S Trust—with Generation-Skipping Provisions 24-4

*Form 24-2: Sample QSST Election 24-15

*Form 24-3: Electing Small Business Trust (“ESBT”) for Descendants of Settlor for Maximum Perpetuities Period 24-17

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 Agreement. 25-4
 *Form 25-2: QPRT Calculations and Graphic Illustration from Brentmark Software 25-17
 25.2 Grantor Retained Annuity Trusts (GRATs) 25-19
 25.2.1 Requirements and Practical Uses 25-19
 25.2.2 Illustrations and Computer Projections/Presentation Charts. 25-20
 25.2.3 Forms. 25-20
 *Form 25-3: Grantor Retained Annuity Trust Agreement 25-21
 *Form 25-4: GRAT Calculations and Graphic Illustration from Brentmark Software 25-28

PART IX—CHARITABLE GIFT PLANNING

CHAPTER 26 CHARITABLE GIFT PLANNING 26-1

26.1 Closely Held Corporate Charitable Contributions 26-1
 26.1.1 Constructive Dividends 26-2
 26.1.2 Redemption of Charitable Gifts of Business Interests 26-2
 26.2 Individual Gifts and Bequests 26-4
 26.2.1 Income Tax Deduction Limits 26-4
 26.2.2 Unlimited Gift and Estate Tax Deduction 26-7
 26.2.2.1 Reporting the Gifts 26-7
 26.2.2.2 Limits on Deduction for Tangible Personal Property. 26-7
 26.3 Charitable Remainder Trusts 26-7
 26.3.1 General Features of CRTs 26-8
 26.3.2 Unique Aspects of the Charitable Remainder Unitrust (CRUT) 26-11
 26.3.2.1 NIMCRUTS 26-11
 26.3.2.2 Mandatory Provisions 26-13
 26.3.2.3 Optional Provisions. 26-15
 26.3.3 Unique Aspects of the Charitable Remainder Annuity Trust (CRAT). 26-17

CONTENTS

26.3.3.1	Mandatory Provisions	26-17
26.3.3.2	Optional Provisions	26-18
26.3.4	Taxation of the Donor	26-19
26.3.4.1	Income Tax Deduction	26-19
26.3.4.2	Capital Gains	26-20
26.3.4.3	Gift Tax	26-21
26.3.4.4	Estate Tax	26-21
26.3.4.5	Generation-Skipping Transfer Tax	26-21
26.3.5	Income Taxation of the Trust.	26-22
26.3.5.1	Reporting Requirements for a CRT.	26-22
26.3.6	Income Taxation of the Non-Charitable Beneficiary.	26-22
26.3.7	Prohibited Transactions Rules	26-24
26.3.8	Planning Considerations	26-25
26.3.8.1	Funding the CRT.	26-25
26.3.8.2	Marital Deduction Planning—Spousal CRT or QTIP with Remainder to Charity	26-26
26.3.8.3	Selecting a Trustee	26-27
26.3.8.4	Choosing the CRUT or the CRAT.	26-27
26.3.8.5	Investment Issues	26-28
26.3.9	Some Applications.	26-28
26.3.9.1	Retirement Plan Supplement or Substitute	26-28
26.3.9.2	Asset Diversification Opportunity.	26-28
26.3.9.3	Closely Held Businesses	26-29
26.3.9.4	Charitable Giving and Wealth Replacement	26-29
26.3.9.5	Using Life Insurance and the CRUT as a Tax-Favored Means of Providing an Annuity for Donor's Spouse	26-30
26.3.9.6	A Strategy for Dealing with Income in Respect of Decedent (IRD).	26-30
26.4	Charitable Lead Trust.	26-30
26.4.1	Taxation of Lead Trusts	26-31
26.4.2	Drafting Charitable Lead Trusts	26-32
26.4.3	Planning for Lead Trusts	26-34
26.5	Gifts of Remainder Interests in Residence or Farm	26-34
26.6	Split-Interests in Tangible Personal Property	26-35
26.7	Conservation Easements.	26-36
26.8	Sample Forms for Charitable Remainder Annuity Trusts and Unitrusts (<i>Inter Vivos</i> and Testamentary).	26-38
26.8.1	Sample Forms for Charitable Remainder Annuity Trusts	26-38
26.8.1.1	<i>Inter Vivos</i>	26-38
	*Form 26-1: Sample <i>Inter Vivos</i> Charitable Remainder Annuity Trust— One Life	26-39

	*Form 26-2:	Sample <i>Inter Vivos</i> Charitable Remainder Annuity Trust— Term of Years	26-40
	*Form 26-3:	Sample <i>Inter Vivos</i> Charitable Remainder Annuity Trust— Two Lives, Consecutive Interests	26-41
	*Form 26-4:	Sample <i>Inter Vivos</i> Charitable Remainder Annuity Trust— Two Lives, Concurrent and Consecutive Interests	26-43
26.8.1.2	Testamentary		26-45
	*Form 26-5:	Sample Testamentary Charitable Remainder Annuity Trust—One Life	26-45
	*Form 26-6:	Sample Testamentary Charitable Remainder Annuity Trust—Term of Years	26-47
	*Form 26-7:	Sample Testamentary Charitable Remainder Annuity Trust—Two Lives, Consecutive Interests	26-48
	*Form 26-8:	Sample Testamentary Charitable Remainder Annuity Trust—Two Lives, Concurrent and Consecutive Interests	26-50
26.8.2	Sample Forms for Charitable Remainder Unitrusts		26-51
26.8.2.1	<i>Inter Vivos</i>		26-51
	*Form 26-9:	Sample <i>Inter Vivos</i> Charitable Remainder Unitrust—One Life	26-52
	*Form 26-10:	Sample <i>Inter Vivos</i> Charitable Remainder Unitrust—Term of Years	26-52
	*Form 26-11:	Sample <i>Inter Vivos</i> Charitable Remainder Unitrust—Two Lives, Consecutive Interests	26-55
	*Form 26-12:	Sample <i>Inter Vivos</i> Charitable Remainder Unitrust—Two Lives, Concurrent and Consecutive Interests	26-57
26.8.2.2	Testamentary		26-60

CONTENTS

*Form 26-13: Sample Testamentary Charitable Remainder Unitrust—One Life 26-60

*Form 26-14: Sample Testamentary Charitable Remainder Unitrust—Term of Years 26-62

*Form 26-15: Sample Testamentary Charitable Remainder Unitrust—Two Lives, Consecutive Interests 26-63

*Form 26-16: Sample Testamentary Charitable Remainder Unitrust—Two Lives, Concurrent and Consecutive Interests 26-65

CHAPTER 27 TRUSTS FOR INDIVIDUALS WITH SPECIAL NEEDS 27-1

27.1 Overview: Planning Strategies for Families of Children with Special Needs 27-1

27.2 The Supplemental Needs Trust 27-1

 *Form 27-1: Supplemental Needs Trust for Disabled Child 27-2

27.3 “Self-Settled” Special Needs Trust for Disabled Beneficiary under Age 65 27-11

 27.3.1 Overview 27-11

 27.3.2 Requirements and Benefits 27-11

 *Form 27-2: Self-Settled Supplemental Needs Trust for Disabled Beneficiary under Age 65 (“(d)(4)(A) Trust”) 27-12

PART X—ALTERNATIVE DRAFTING FORMS

CHAPTER 28 ALTERNATIVE DRAFTING FORMS 28-1

28.1 Special Testamentary Trusts 28-1

 28.1.1 Trust for Family Residence (for Benefit of Surviving Spouse for Life, Remainder to Children) 28-1

 *Form 28-1: Trust of Family Residence (for Benefit of Surviving Spouse for Life, Remainder to Children) 28-1

 28.1.2 Trust for Vacation Home (for Benefit of Children) 28-2

 *Form 28-2: Trust for Vacation Home (for Benefit of Children) 28-2

 28.1.3 Trusts Primarily for Education of Descendants 28-3

	*Form 28-3:	Grandchildren’s Educational Trust: General Standards with Preference for Education	28-3
	*Form 28-4:	Incentive and Distribution Provisions for Children to Attend College	28-3
	*Form 28-5:	Flexible Guidelines for Trustee for Educational Costs	28-4
	*Form 28-5A:	Guidelines to Trustee Regarding Education and Premium on Gainful Employment	28-4
28.1.4		Qualified Domestic Trust (QDOT)	28-4
	*Form 28-6:	Qualified Domestic Trust (QDOT)	28-4
28.1.5		QTIP Trust Provisions for Spouse in Nursing Home	28-7
	*Form 28-7:	QTIP Trust Provisions for Spouse in a Nursing Home	28-7
28.1.6		Generation-Skipping Trust—General Power of Appointment upon Child’s Death to Prevent Imposition of GST Tax.	28-9
	*Form 28-8:	Generation-Skipping Trust—Providing for General Power of Appointment upon Child’s Death to Prevent Imposition of GST Tax	28-9
28.1.7		Trust for Client’s Parents after Client’s Death	28-10
	*Form 28-9:	Trust for Client’s Parents after Client’s Death (Broad)	28-10
	*Form 28-10:	Narrow Form (Distribution to Parents Only after Proper Provision for Spouse and Children).	28-11
28.1.8		Graduated Distribution of Net Income to Child	28-11
	*Form 28-10A:	Graduated Distribution of Net Income to Child	28-11
28.1.9		Bypass Trust to Supplement Spouse’s Other Income (from Spouse’s Family Trust Fund).	28-12
	*Form 28-10B:	Bypass Trust to Supplement Spouse’s Income if Spouse’s Family Trust Fund Does Not Provide Adequate Support (Objective Threshold)	28-13
28.1.10		Discretion of Trustee to Withhold Trust Distributions in Certain Adverse Circumstances for Beneficiary (e.g., Drug Abuse, Marital Dissolution Pending)	28-13
	*Form 28-10C:	Guidelines to Trustee on Interest Regarding Education and Premium on Gainful Employment	28-14
28.2		Special Provisions for Closely Held Business Interest	28-14
28.2.1		Closely Held Business Power for Fiduciaries	28-14
	*Form 28-11:	Broad Closely Held Business Power for Fiduciaries	28-14

CONTENTS

28.2.2 Right of First Refusal 28-15
 *Form 28-12: Right of First Refusal for Disposition of Corporate Stock 28-15
 *Form 28-13: Right of First Refusal for Disposition of Interest in Limited Liability Company 28-16
 28.2.3 Compliance with “Buy-Sell” 28-17
 *Form 28-14: Compliance with “Buy-Sell”. 28-17
 28.3 Disposition of Bodily Parts 28-17
 28.3.1 Cremation 28-17
 *Form 28-15: Cremation 28-18
 28.4 Specific Bequests 28-18
 28.4.1 Specific Bequest of Tangible Personal Property of Life Estate to Spouse 28-18
 *Form 28-16: Specific Bequest of Tangible Personal Property of Life Estate to Spouse 28-18
 28.4.2 Specific Bequests to Grandchild under Minnesota Uniform Transfers to Minors Act. 28-18
 *Form 28-17: Specific Bequests to Grandchild under Minnesota Uniform Transfers to Minors Act. 28-19
 28.4.3 Gift to Surviving Spouse in Trust until Death or Remarriage 28-19
 *Form 28-18: Gift to Surviving Spouse in Trust until Death or Remarriage 28-19
 28.4.4 Specific Bequest of Tangible Personal Property: Division by Lot 28-19
 *Form 28-18A: Specific Bequest of Tangible Personal Property: Division by Lot 28-19
 28.4.5 Cash Gifts to Individual Beneficiaries. 28-20
 *Form 28-18B: Cash Gifts to Individual Beneficiaries—Contingent upon Survival 28-20
 *Form 28-18C: Cash Gifts to Individual Beneficiaries with Gift Over if Named Beneficiary Fails to Survive 28-20
 28.4.6 Cash Gifts to Charities 28-20
 *Form 28-18D: Cash Gifts to Charity with Suggested Allocation of Gift 28-21
 *Form 28-18E: Cash Gift to Charity—Limited by a Percentage of Estate 28-21
 28.4.7 Specific Bequest of Stock 28-21
 *Form 28-18F: Specific Bequest of Stock—No Contingent Beneficiaries 28-21
 *Form 28-18G: Specific Bequest of Stock—Contingent Beneficiaries 28-22

28.4.8	Outright Bequest of Residuary Estate to More than One Legatee in Equal Shares	28-22
	*Form 28-18H: Outright Bequest of Residuary Estate to More than One Legatee in Equal Shares.	28-22
28.4.9	Transferring Property Subject to Mortgage.	28-22
	*Form 28-18I: Direction to Personal Representative to Pay Mortgage from Estate.	28-23
	*Form 28-18J: Authorization to Pay Off Mortgage.	28-23
28.5	Special Provisions Where Estate Consists of Stock in Subchapter S Corporation	28-23
28.5.1	Subchapter S Provisions	28-23
	*Form 28-19: Subchapter S Provisions	28-24
28.6	Miscellaneous Provisions.	28-25
28.6.1	Specific Exercise of Testamentary Power of Appointment	28-25
	*Form 28-20: Specific Exercise of Testamentary Power of Appointment	28-25
28.6.2	Forgiveness of Debt at Death	28-25
	*Form 28-21: Forgiveness of Debt at Death (Unrecorded Debt)	28-26
	*Form 28-22: Forgiveness of Debt at Death (Recorded Mortgage)	28-26
28.6.3	Catch-All/Ultimate Beneficiary—to Various Charities.	28-26
	*Form 28-23: Catch-All/Ultimate Beneficiary—to Various Charities	28-26
28.6.4	Marital Deduction Equalization Clause	28-27
	*Form 28-24: Marital Deduction Equalization Clause	28-27
28.6.5	Omission of Spouse—Second Marriage	28-27
	*Form 28-25: Omission—Spouse from Second Marriage.	28-28
28.6.6	Omission Due to Religious Affiliation or Joining of Cult.	28-28
	*Form 28-26: Omission—Due to Religious Affiliation.	28-28
	*Form 28-27: Omission—Due to Joining of Cult	28-28
28.6.7	Request for Use of Specific Investment Advisor.	28-28
	*Form 28-28: Request for Use of Specific Investment Advisor	28-29
28.6.8	Request for Use of Specific Attorney to Handle/Advise Estate Administration	28-29
	*Form 28-29: Request for Use of Specific Attorney to Handle/Advise Estate Administration.	28-29
28.6.9	<i>In Terrorem</i> Provision	28-29
	*Form 28-30: <i>In Terrorem</i> Provision	28-30
	*Form 28-30A: Omission with Broad <i>In Terrorem</i> Provisions.	28-30
28.6.10	Provision Specifically Naming Children in Will.	28-31

CONTENTS

*Form 28-31: Provision Specifically Naming Children in Will 28-31

*Form 28-31A: Provision Specifically Referencing Children of a Prior Marriage; No Children from Current Marriage. 28-31

*Form 28-31B: Provision Specifically Referencing Children of Current Marriage and Prior Marriage 28-32

28.6.11 Alternative Tax Clause—Apportionment for Nonprobate Property 28-32

*Form 28-32: Alternative Tax Clause—Apportionment for Nonprobate Property 28-32

28.6.12 Alternative Tax Clause—Exclusion of Certain Taxes 28-33

*Form 28-33: Alternative Tax Clause—Exclusion of Certain Taxes 28-33

28.6.13 Alternative Tax Clause—Full Apportionment and “Split” Apportionment 28-33

*Form 28-33A: Alternative Tax Clause—Apportionment for all Property under Minnesota Apportionment Statute (Unmarried Testator). 28-34

*Form 28-33B: Alternative Tax Clause—for Probate Property, Property under Revocable Trust and Other Property (Unmarried Testator) 28-34

28.6.14 Consent and Waiver to Spouse’s Will 28-34

*Form 28-33C: Consent and Waiver to Spouse’s Will 28-34

28.6.15 Assignment of Tangible Personal Property to Revocable Trust 28-34.1

*Form 28-33D: Assignment of Tangible Personal Property to Revocable Trust 28-34.1

28.7 Provisions Dealing with Trustees 28-34.3

28.7.1 Compensation of Trustee 28-34.3

*Form 28-34: Trustees to Serve without Compensation 28-35

*Form 28-35: Trustees to Receive Reasonable Compensation; Published Fee Schedule for Corporate Trustee 28-35

*Form 28-36: Fee Based upon Statutory Commissions. 28-35

*Form 28-37: Fee Schedule for Corporate Trustee; Aggregation of Trusts to Determine Fee 28-36

28.7.2 Final Succession of Trustees 28-36

*Form 28-38: Corporate Trustee as Final Successor 28-36

*Form 28-39: Named Trustees Designate Successor. 28-36

*Form 28-39A: Provision for Successive Trustees/ Remaining Trustee to Designate Successor/Corporate Trustee as Ultimate (Comprehensive Clause) 28-37

28.7.3 Resignation and Appointment of Trustees 28-37

 *Form 28-40: Resignation of Trustee. 28-37

 *Form 28-41: Designation of Co-Trustee by Settlor under
 Revocable Trust Agreement 28-38

 *Form 28-42: Designation of Co-Trustee by Remaining
 Trustee Under Irrevocable Trust Agreement
 following Resignation of Trustee 28-39

 *Form 28-43: Acceptance by Newly Appointed Trustee
 under Revocable Trust Agreement 28-40

 *Form 28-44: Acceptance by Newly Appointed Trustee
 under Irrevocable Trust Agreement 28-41

28.7.4 Changes in Trust Situs. 28-41

 *Form 28-44A: Changes in Trust Situs. 28-42

28.8 Amendments and Restatements to Revocable Trust Agreements 28-42

 *Form 28-45: Amendment to Revocable Trust Agreement. 28-42

 *Form 28-46: Amendment and Restatement of Revocable
 Trust Agreement 28-44

28.9 Special Trustee Powers for Survivorship Life Insurance Trust 28-46

 *Form 28-47: Provision Authorizing Trustees to Sell Insurance
 Policy to Children. 28-47

 *Form 28-48: Additional Provision Regarding Use of Insurance
 Proceeds 28-47

28.10 “CAP” in Light of 2012 ATRA to Limit Size of Non-Marital Share. 28-47

 *Form 28-50: Cap to Limit Size of Non-Marital Share 28-48

28.11 Additional Request and Guidance to Guardians of Minor Children 28-49

 *Form 28-51: Request That Guardians Allow Visitation by
 Grandparents. 28-49

 *Form 28-52: Request That Children Be Raised in Orthodox
 Jewish Tradition—Rabbi to Be Consulted. 28-50

 *Form 28-53: Request to Preserve Relationship between
 Children and Both Families 28-50

28.12 Special Provisions when Retirement Benefits Are Payable to a
 Marital QTIP Trust. 28-50

28.13 Minnesota Cabin Trust. 28-51

 *Form 28-55: Form for Minnesota Cabin Trust 28-51

28.14 Nonjudicial Settlement Agreements. 28-54

 *Form 28-56: Form for Nonjudicial Settlement Agreement 28-55

**CHAPTER 29 SELECTED PLANNING STRATEGIES AND
 TECHNIQUES 29-1**

29.1 Use of “5 & 5” Powers in Trusts 29-1

29.2 Flexible Estate Planning with Limited Powers of Appointment 29-2

29.3 Trusts for Children—Pot Trusts vs. Separate Trusts 29-3

CONTENTS

29.4 The Pitfall of Joint Ownership by Spouses and Solution 29-4

29.5 Use of Disclaimers in Planning Beneficiary Designations. 29-5

29.6 Techniques to Reduce Taxes in Connection with Specific
Bequests or Cash Legacies 29-6

 29.6.1 Where Beneficiary Other than Spouse Is Intended
 Recipient—Planning for Reduction of Federal Estate
 Taxes and Minnesota Estate Tax 29-6

 29.6.2 Where Charity Is Intended Recipient 29-7

29.7 Outright Marital Bequest vs. Trust for Spouse: Planning
Considerations 29-7

29.8 Revised Planning for Surviving Spouse after Death of First Spouse. 29-8

 29.8.1 Use of the Residence 29-9

 29.8.2 The QTIP Trust—Tax Traps upon the Surviving Spouse’s
 Death 29-9

 29.8.3 Credit Shelter/Bypass Trusts: Strategic Use during Lifetime
 of Surviving Spouse 29-10

29.9 The Credit Shelter/Bypass Trust: Rights and Protections Available to
Surviving Spouse and Asset Protection Considerations. 29-11

 29.9.1 Rights of Surviving Spouse in Credit Shelter Trust 29-11

 29.9.2 Selecting the Appropriate Allocation of Income and Principal
 among the Spouse and Beneficiaries. 29-12

 29.9.3 Structuring Credit Shelter/Bypass Trust as Asset Protection
 Trust. 29-13

29.10 Conduit Trust for Descendant as Beneficiary of Retirement Plan 29-13

 Form 29-1: Conduit Trust for Benefit of Descendant—for
 Testamentary Trust Named as Beneficiary of
 Retirement Plan 29-14

29.11 Testamentary Distributions of Qualified Retirement Plans and
IRAs under the SECURE Act. 29-14

**PART XI—SUMMARIES OF SELECT ESTATE PLANNING
PRACTICE AREAS AND STRATEGIES**

**CHAPTER 30 SELECT ESTATE PLANNING SUMMARIES:
MINNESOTA AND FEDERAL LAW 30-1**

30.1 Necessity of Will Even with Other Forms of Testamentary Disposition 30-1

30.2 Organizational Checklist of Will: Comments and Strategic Practice
Pointers. 30-1

 30.2.1 Preamble/Exordium Clause (Introductory Paragraph) 30-2

 30.2.2 Definitions and Appointment of Fiduciary (Section 1). 30-2

 30.2.3 Funeral Arrangements (Section 2). 30-3

 30.2.4 Debts (Section 3). 30-4

 30.2.5 Specific Bequests; Disposition of Tangible Personal
 Property (Section 4); Principal Residence (Section 5) 30-4

30.2.6 Payment of Taxes (Section 6) 30-4

30.2.7 Residuary Estate (Section 8) 30-5

30.2.8 Dispositive Provisions (Other than Specific Bequests)
(Sections 7 and 9) 30-6

30.2.9 The “Catastrophic”/“Catch-All” Provision (Section 10). 30-6

30.2.10 Fiduciary Powers/Administrative Provisions Re: Trustees
and Personal Representatives (Section 11 for Trustees and
Section 13 for Personal Representatives) 30-6

30.2.11 Insurance or Pension Plan (Section 12). 30-7

30.2.12 Spendthrift Provision (Section 14) 30-8

30.2.13 Rule against Perpetuities (Section 16). 30-8

30.2.14 Gender (Section 17) 30-8

30.2.15 Headings (Section 18). 30-8

30.2.16 Signature and Attestation Clauses (Final Paragraphs) 30-8

30.3 The Federal Transfer Tax System under American Tax Payer
Relief Act of 2012 (“ATRA” or “ATRA 2012”). 30-9

30.3.1 ATRA 2012: Highlights and Summary 30-9

30.3.1.2 A New Year’s Day 2013 Surprise 30-9

30.3.1.3 *Permanent* Estate, Gift and
Generation-Skipping Tax (GST)
Exemptions of \$5,000,000
(With Indexing) 30-9

30.3.1.3.1 2012 Exemptions:
Unified and Permanent 30-9

30.3.1.3.2 Comment on Significance
and Effects 30-10

30.3.1.3.2.1 No Sunset of
\$1 Million and
Predictability . . 30-10

30.3.1.3.2.2 No Concern
about
“Clawback” . . . 30-10

30.3.1.4 Increase in Tax Rates 30-10

30.3.1.5 Portability is Made Permanent 30-11

30.3.1.5.1 Basic Concept Re:
Utilizing Spouse’s
Unused Exemption
Amount. 30-11

30.3.1.5.2 Electing Portability. 30-11

30.3.1.5.3 Effective Dates 30-12

30.3.1.5.4 The *Last* Deceased
Spouse Requirement. 30-12

30.3.1.6 Chart Summarizing Federal Estate,
Gift and GST Changes under

CONTENTS

ATRA 2012 (for 2013 and
Subsequent Years) 30-13

30.3.1.7 The New Era of Estate Planning
After ATRA 2012 30-13

30.3.1.7.1 Impact of ATRA 2012
on Forms and Formula
Clauses Due to Increased
Permanent Federal Estate
Tax Exemption 30-14

30.3.2 BACKGROUND: The 2010 TRA—Provisions Affecting
Federal Gift, Estate, and Generation-Skipping
Transfer Taxes 30-20

30.3.3 BACKGROUND: The Basics and the State of Affairs
before EGTRRA (Economic Growth and Tax Relief
Reconciliation Act of 2001) 30-22

30.3.4 BACKGROUND: EGTRRA: Highlights and Summary. 30-23

30.3.5 BACKGROUND: Summary Chart: Estate, Gift, and
GST Tax Changes under EGTRRA. 30-23

30.4 Generation-Skipping Transfer Tax—with New ATRA 2012
Modifications 30-24.2

30.4.1 Purpose 30-24.2

30.4.2 Mechanics and Application 30-24.3

30.4.3 Transfers Subject to GST Tax 30-24.3

30.4.4 Transfers Exempt from GST Tax 30-24.4

30.4.5 Computing GST Tax 30-24.5

30.4.6 Administration and Return Requirements. 30-24.6

30.5 “*Per Stirpes*” and “*Per Capita*”: Explanation and Examples 30-25

30.6 QDOTs and the Noncitizen Spouse 30-28

30.6.1 Citizenship of Donee and the Marital Deduction 30-28

30.6.2 Gift Tax Issues. 30-28

30.6.2.1 Joint Tenancies 30-29

30.6.2.2 Joint and Survivor Annuities. 30-30

30.6.3 Estate Tax Issues 30-30

30.6.4 The Qualified Domestic Trust (QDOT). 30-31

30.6.4.1 Introduction. 30-31

30.6.4.2 Distinguishing Features of a QDOT 30-32

30.6.4.3 Requirements for QDOTs under the
Treasury Regulations. 30-33

30.6.4.3.1 Right to Withhold Tax 30-33

30.6.4.3.2 Qualified Marital Interest
Requirements 30-33

30.6.4.3.2.1 Property
Passing
to QDOT. 30-33

	30.6.4.3.2.2	Property Passing Outright to Spouse	30-33
30.6.4.3.3		Security and Other Arrangements for Payment of Tax—QDOTs with Assets over \$2 Million . . .	30-34
	30.6.4.3.3.1	Bank Trustee. . .	30-34
	30.6.4.3.3.2	Bond	30-34
	30.6.4.3.3.3	Letter of Credit	30-35
	30.6.4.3.3.4	Additional Governing Instrument Requirements for Bond or Letter of Credit Arrangements . .	30-35
30.6.4.3.4		Security and Other Arrangements for Payment of Tax—QDOTs with Assets of \$2 Million or Less	30-35
	30.6.4.3.4.1	Multiple QDOTs	30-36
	30.6.4.3.4.2	Look-Through Rules.	30-36
	30.6.4.3.4.3	Fluctuations in Value.	30-36
	30.6.4.3.4.4	Principal Residence and Related Personal Effects.	30-36
30.6.5		Use of the Bypass Trust for Surviving Non-Citizen Spouse	30-37
30.7		Assets Passing Outside the Will (Nonprobate Assets) by Operation of Law.	30-38
	30.7.1	Jointly Owned Property.	30-38
	30.7.1.1	Tenancy-in-Common.	30-38
	30.7.1.2	Joint Tenancy with Right of Survivorship.	30-38
	30.7.1.2.1	Federal Estate Tax	30-39
30.7.2		Community Property	30-39
30.7.3		Life Insurance	30-40
30.7.4		Qualified Retirement Plan Assets	30-40

CONTENTS

30.8 Minnesota’s “Decoupled” Estate Tax 30-40

30.8.1 Introduction and Overall Impact 30-40

30.8.2 Minnesota “Decoupling” 30-41

30.8.3 Overall Consequences of Decoupling 30-41

30.8.4 Changes to the Minnesota Estate Tax Exemption as a
Result of the Omnibus Tax Bill 30-42

30.8.5 The Estate Planner’s Opportunity and Challenge in
Maximizing Exemptions 30-43

30.8.5.1 General Objectives and Strategies 30-43

30.8.5.2 Disclaimer-Based Structure 30-43

30.8.5.2.1 Purpose and Use 30-43

30.8.5.2.2 Risks 30-44

30.8.5.2.3 The Power of Appointment
Trap 30-44

30.8.5.2.4 Jointly Held Assets 30-44

30.8.5.2.5 Sample Forms 30-44.1

30.8.5.3 Formula-Based Structure 30-44.1

*Form 30-1: Residuary Estate All to
Spouse with Disclaimer-
Activated Spray/
Non-Leaking Family Trust 30-46

30.9 Estate Planning Issues for Same-Sex Couples in Minnesota 30-47

30.9.1 2013 Developments 30-47

30.9.1.1 Minnesota Law Legalizes Same-Sex
Marriages 30-47

30.9.1.2 The *Windsor* Decision 30-47

30.9.1.3 *Revenue Ruling 2013-17* Clarifies
Application of *Windsor* 30-48

30.9.2 Estate Planning Implications of Same-Sex Marriages
in Minnesota 30-49

30.9.2.1 Potential Minnesota Estate Planning
Implications 30-49

30.9.2.1.1 Elective Share 30-49

30.9.2.1.2 Intestate Distribution
and Preferences as
Personal
Representative 30-49

30.9.2.1.3 Marital Deduction
Opportunities 30-49

30.9.2.1.4 Fiduciary and Trust
Construction Issues 30-50

30.9.2.2 Federal Estate Planning Implications 30-51

	30.9.2.2.1	Unlimited Marital Deduction for Gift and Estate Tax	30-51
	30.9.2.2.2	Gift Splitting	30-51
	30.9.2.2.3	Portability	30-51
	30.9.2.2.4	Rollover Rights on Spouse’s IRA	30-52
30.9.3		References Throughout Book.	30-52
30.9.4		Impact of the New Minnesota Trust Code.	30-52
	30.9.4.1	Background, Purpose and Effect.	30-52
	30.9.4.2	Default Provisions and Mandatory Provisions	30-53
	30.9.4.3	The New Directed Trust Statutes	30-53
	Form 30-2:	Provisions Appointing Trust Protector and Setting Out Powers	30-55

PART XII—INDICES

Subject Index	INDEX-1
Forms Index	INDEX-8