

2014

Drafting New York Wills and Related Documents 4th ed.

William P. LaPiana

Mark Ira Bloom

Harold D. Klipstein

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PUBLICATION UPDATE

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Drafting New York Wills and Related Documents, Fourth Edition

NEW YORK

Publication 338 Release 49 JUL - 1 2015 June 2015

LAW SCHOOL

HIGHLIGHTS

The Beneficiary

- Chapter 6 was extensively revised to reflect major changes regarding children conceived after the death of a genetic parent.

Drafting for Surviving Spouses and Partners

- Chapter 7 was updated to reflect the rapidly-changing status of same-sex marriage.

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Chapter 6 was significantly revised, especially regarding the definition of “children.” Section 6.03 has been broken up into new Sections 6.03 and 6.04, with Section 6.03 considering the definition of “children” and new Section 6.04, delving deeply into the rules governing dispositions to classes of family members. New forms have been added, and forms have been revised, including:

- § 6.05 Form 3: Children: Surviving Children—No Substitution to Issue of Predeceased Children
- § 6.05 Form 4: Surviving Children—No Substitution to Issue of Predeceased Children with Express Give Over
- § 6.05 Form 5: Consent to Posthumous Reproduction and Grant of Authority to Make Decisions About Use of Stored Genetic Material—Statutory Form
- § 6.05 Form 6: Provision for Posthumously Conceived Children of

Release 49 of *Drafting New York Wills and Related Documents, Fourth Edition* has been updated for recent case law and state and federal statutes and regulations.

The Beneficiary

Testator, Adopting Statutory Definition

- § 6.05 Form 7: Provision for Post-humously Conceived Children of Testator, Overriding Statutory Definition (Short Form)
- § 6.05 Form 8: Provision for Post-humously Conceived Children of Testator, Overriding Statutory Definition (Long Form)
- § 6.05 Form 9: Non-Marital Children
- § 6.05 Form 10: Disposition to Include Adopted-Out Issue (Contrary to Statutory Presumption)
- § 6.05 Form 11: Adopted Child: Included as Child of the Blood
- § 6.05 Form 12: Adopted Child: Not Included as Child of the Blood
- § 6.05 Form 13: Issue Not to Include Persons Adopted After Specified Age
- § 6.05 Form 14: Issue Not to Include Person Adopted After Specified Age Unless Lived in Household of Adoptive Parent as Minor or Was Stepchild of Adoptive Parent

Drafting for Surviving Spouses and Partners

The state of same-sex marriage continues

to change state by state. Chapter 7 sets forth the changes in various states over the past year

Drafting Complete Revocable Trusts

Chapter 18, Section 18.11, has been revised and now includes four different examples of complete revocable trusts:

- § 18.11 Form 1: Complete Minimally Funded Revocable Trust: Grantor as Sole Initial Trustee and Income Beneficiary
- § 18.11 Form 2: Complete Funded Revocable Trust Agreement: Outright Distributions on Grantor's Death
- § 18.11 Form 3: Complete Revocable Trust Agreement: QTIP Marital Deduction/Credit Shelter Trusts
- § 18.11 Form 4: Complete Amended and Restated Declared Revocable Trust: Reverse QTIP, Regular QTIP and Credit Shelter Trusts

Forms on Disk

All forms appearing in this publication are available on a complimentary CD-Rom that can be used on any word processing system.

Finding Aids

This release contains a completely revised Index and Tables.

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Drafting New York Wills and Related Documents Fourth Edition

Publication 338 Release 49

June 2015

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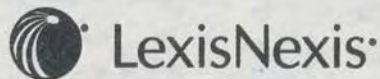
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Part I

Overview of Work

CHAPTER 1

Overview of Drafting New York Wills and Related Documents

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- § 1.21 Analytical Checklist 1.17: Where to Find Analysis Regarding Revocable Trusts
- § 1.22 Analytical Checklist 1.18: Where to Find Analysis Regarding Advance Directives for Property and Disposition of Testator's Remains
- § 1.23 Analytical Checklist 1.19: Where to Find Analysis Regarding Advanced Written Directives for Health Care
- § 1.24 Analytical Checklist 1.20: Where to Find Analysis Regarding Retirement and Estate Planning
- § 1.25 Analytical Checklist 1.25: Where to Find Analysis Regarding Public Sector Benefits Under Social Security
- § 1.26 Index of Analytical Checklists

§ 1.01 Scope of Chapter 1: Overview of Drafting New York Wills and Related Documents

This chapter provides an overview of the Fourth Edition of Drafting New York Wills and Related Documents. Section 1.02 provides some interesting background on the three prior editions. Section 1.03 explains the organization of the Fourth Edition. Section 1.04 explains important themes for Drafting New York Wills and Related Documents. Sections 1.05–1.24 provide analytical checklists for each of the chapters; these checklists raise questions that the drafter will need to resolve with his or her clients. Section 1.25 contains an index to the analytical checklists.

§ 1.02 Prior Editions

The first edition of this work was prepared by Harold D. Klipstein, a member of the New York Bar, and was published in 1948 by Baker Voorhis & Co., Inc. The work was in one volume and consisted of 10 chapters spanning 588 pages of text. The book contained fewer than 300 forms, all pertaining to wills. Mr. Klipstein prepared pocket-part supplements.

Mr. Klipstein also was the sole author of the second edition, which was published in 1969 by Matthew Bender & Company Incorporated. Enactment of the Estates, Powers and Trusts Law in the mid-sixties was a compelling reason for a second edition, which also was in one volume but had been expanded to 15 chapters and 679

pages of text. Significantly, a new chapter involved the Marital Deduction, albeit the chapter was only 37 pages long. Passing reference was also made to taxes in the new
(Text continued on page 1-3)

chapter on powers of appointment. Like the First Edition, the Second Edition was supplemented by pocket parts, including the final June 1982 Supplement which Mr. Klipstein prepared with Susan Z. Frayman of the New York Bar.

The Third Edition of Drafting New York Wills was published in 1983 by Matthew Bender & Company Incorporated, with Mr. Klipstein continuing for a while as author. The Third Edition contained some important changes. First, the work was expanded to two loose-leaf volumes which allowed for supplementation by releases; in effect, new and revised pages replaced existing pages. Second, Matthew Bender recognized that the preparation of a will no longer existed in a vacuum. Related documents became the norm in practice, including the preparation of advance directives for both property and health and revocable trusts. As a result, a new chapter was added to deal with advance directives, as well as a new chapter on revocable trusts. In addition, most wills could no longer be prepared without taking into account tax considerations and the tremendous complexity caused by tax issues. A separate chapter on charitable dispositions contained substantial treatment of tax related issues, planning and drafting. A chapter on retirement benefits was also added, including the tax considerations. Further, a chapter on generation-skipping chapters was added. By 2010, the work had grown to 20 chapters.

By the mid-1990s, semi-annual releases became necessary to reflect the increased activity in the wills and related areas. Because Mr. Klipstein had long since passed away, Professor Ira Mark Bloom of the Albany Law School prepared the semi-annual revision for the Third Edition, although out of respect, Mr. Klipstein's name was retained as the lead author. Over time Professor William P. LaPiana of the New York Law School assumed equal responsibility with Professor Bloom for the preparation of the semi-annual releases.

In June of 2010, the 39th and final release under the Third Edition was published. It contained a revised 300 page marital deduction chapter (as compared with the original 37 page marital deduction chapter.) In addition, Release 39 included a revised chapter on advance directives which exceeded 300 pages. (The first two editions had contained no discussion of advance directives!)

§ 1.03 Organization of the Fourth Edition

The Fourth Edition has been appropriately retitled as "Drafting New York Wills and Related Documents" (from the previous title of the three prior editions: "Drafting New York Wills.") In effect, the Fourth Edition includes not only treatment of wills, but also revocable trusts, powers of attorney for property, directives on disposition of remains, health care proxies, living wills and directives against resuscitation (DNRs). Relevant tax considerations are included throughout the work.

Notwithstanding the inclusion of many chapters that do not involve wills, the Fourth Edition continues the primacy of wills in this 2 volume, 21 chapter work. Indeed, the first 17 chapters are devoted to the planning and drafting of wills, beginning with Chapter 2 which considers the preliminaries necessary for the actual planning and drafting of wills and Chapter 3 which addresses will execution and revocation aspects. Chapter 4 treats nondispositive will provisions while Chapters 5-7 address dispositive

provisions. Chapters 8–10 consider planning and drafting for successive enjoyment by beneficiaries, including a lengthy chapter on testamentary trusts. Chapters 11–13 consider the important area of fiduciaries, including fiduciary powers and duties. Transfer tax considerations are taken up in Chapters 14–16. Finally, Chapter 17 provides examples of complete wills and codicils, together with other kinds of wills.

The non-wills area of practice is handled in Chapters 18–21. Chapter 18 discusses the increasingly-popular revocable trust device. Chapter 19 primarily focuses on the power of attorney for property, including recent, major legislation in New York; in addition, advance directives for the disposition of remains are considered. Chapter 20 deals with advance directives in the medical area, including health care proxies, living wills and DNRs. Finally, Chapter 21 is concerned with the important area of private retirement benefit plans, including the complex intersection of taxation.

§ 1.04 Overriding Themes in Drafting New York Wills and Related Documents

[1] Purpose

The overriding purpose for this work is to provide the practitioner with a comprehensive treatment of wills and related practice areas to enable the practitioner to best serve his or her clients in the planning and preparation of wills and related documents. To that end, Professors Bloom and LaPiana have striven to provide the practitioner not only with information on the state of the law but also with a catalogue of hundreds of forms, with explanations. The authors' goal is to help the drafter craft documents that carry out the testator's specific wishes and goals, whether the document involved is a will, revocable trust or an advance directive.

In the final analysis, the authors hope that this will and related document drafting work will help you uphold the finest traditions of your profession. As expressed by the immortal W. Barton Leach and applicable to not only wills:

[T]he counselor who leaves behind him or her a will book which succeeds in placing property where his or her clients wished it without those uncertainties as to validity and ambiguities as to meaning which breed litigation, can sleep the eternal sleep in the comforting knowledge that he or she has upheld the [profession's] finest traditions . . .¹

[2] Provisions in Documents Should Be Drafted Simply and Unambiguously

The authors have a very specific view that provisions in wills and related documents should be drafted simply and unambiguously yet as comprehensively as necessary. Correlatively, unnecessary and verbose language should be avoided. For example, many drafters prefer to caption a will as the "Last Will and Testament." In truth, "and Testament" is unnecessary since there is no longer a distinction between wills that once applied only to real property and testaments that applied only to personal property. For the drafter who prefers simplicity with precision, the caption "Will" is sufficient.

¹ Leach, *Perpetuities in a Nutshell*, 51 Harv. L. Rev. 638, 671 (1938).

Another example of tradition versus simplicity with precision is in the making of dispositions. Traditional wills provide language such as “I give, bequeath and devise” followed by a description of the property and the beneficiary or beneficiaries. It is suggested that “I give” followed by a description of the property and the beneficiary or beneficiaries is just as acceptable.

Verbosity is traditional in wills. Consider a verbose clause:

Anything hereinbefore to the contrary notwithstanding, each and every disposition, devise, bequest, trust, and other provision to or for the benefit of any person, whether made absolutely or in trust, absolutely or contingent, contained in my Will is made and shall be accepted by the recipient or beneficiary thereof in lieu of and in full payment and satisfaction of any and every obligation or liability, absolute or contingent, if any, which I, in my individual or in any fiduciary or other capacity, or my estate, owed or may owe to such recipient or beneficiary.

Consider how it might be simplified:

Notwithstanding anything to the contrary in this Will, each disposition in this will is conditioned on the beneficiary of the disposition accepting the disposition in full payment and satisfaction of any obligation or liability that I, in my individual or in any other capacity, or my estate, owed or may owe to the beneficiary.

[3] Wills and Related Documents Must Be Properly Executed

Competent document preparation demands that the particular document be executed with the requisite formalities. For example, wills and codicils must comply with the execution requirements set forth in EPTL 3-2.1, discussed in Chapter 3. Revocable trusts must be executed pursuant to the rules of EPTL 7-1.17, discussed in Chapter 18. Similarly, advance directives must comply with statutory execution rules that are discussed in Chapters 19 and 20.

[4] Wills and Related Documents Are Not Etched in Stone

Wills and related documents are not etched in stone. For example, a will is only as good as the facts known and the assumptions made at the time of will execution. Accordingly, the drafter will be well-advised to inform the testator that a new will may be appropriate when major changes take place in the testator's life. For example, marriage, divorce and remarriage are major life events that likely warrant the making of a new will. Although these and other events (e.g. significant change in wealth) can be anticipated in drafting, the making of a new will is likely to better serve the testator and his family. Absent a new will, the effect of the change will be left to the numerous default rules under the EPTL and SCPA. In addition, if a will was based on certain tax assumptions, those assumptions may change, especially in the year 2011.

Similarly, revocable trusts will need to be amended based on changes in the client's circumstances, tax changes and changes that occur in the lives of fiduciaries. Advance directives which rely on fiduciary decision making may become totally ineffective if successor fiduciaries will not be able to serve. In effect, the client should understand that a particular document is not etched in stone so that later developments may require revisiting and revising an existing document.

§ 1.05 Analytical Checklist 1.01: Where to Find Analysis About Client Interview Checklists and other Preliminaries to Will Drafting

- What basic information should the drafter obtain from the client? § 2.02[1]
- What are the different categories of property in which the client has an interest? § 2.02[2]
- What possible plans might the client have for relevant family members and others? § 2.02[3]
- What are the client's tax goals and how can they be carried out? § 2.02[4]
- What nondispositive wishes might the client envision? § 2.02[5]
- Which fiduciaries are needed by the client and who does the client wish to appoint? § 2.02[6]
- What directives should the client consider executing? § 2.02[7]
- Where can the client questionnaire form be found? § 2.03 Form 1 in § 2.03
- What kinds of engagement letters might be considered? § 2.04
- Why should the estate planner be concerned about IRS Circular 230? § 2.05[1]
- Is the estate planner aware of important Circular 230 changes, specifically that a former regulation on covered opinions has been replaced with new regulations on competence and requirements for written advice? §§ 2.05[2] and [3]
- Why should the estate planner be concerned about liability for malpractice? § 2.06

§ 1.06 Analytical Checklist 1.02: Where to Find Analysis Regarding Execution and Revocation of Wills

Execution

- Is the testator 18 years of age or older with requisite mental capacity? § 3.01[1]
- Have the statutory requirements as to will execution been complied with? §§ 3.01[2], 3.01[4]; as to a blind testator? § 3.01[3]
- Has the will been executed under the supervision of an attorney? It is not recommended that the client execute the will without an attorney present, since the formalities of will execution are strictly enforced. § 3.01[2]
- Is a seal needed? § 3.01[5]
- Are the attesting (subscribing) witnesses not beneficiaries and at least two in number? A witness-beneficiary may lose his bequest. § 3.01[6]
- Does the will contain an attestation clause and does it show compliance with statutory provisions as to will execution? §§ 3.01[6][a], [b]
- Have the witnesses executed a self-proving affidavit? An affidavit signed

contemporaneously with the will can avoid delay in probate when the witnesses are unavailable at the time of the testator's death. § 3.01[6][b]

Revocation

- Is the prior will revoked in compliance with statutory provisions? §§ 3.02, 3.02[1], [10]
- Does the testator understand that the revocation of a prior will does not affect
(Text continued on page 1-7)

a revival of a will which was revoked by the prior will? § 3.02[3]

- Have the alternative methods of reviving a prior will (including any codicils thereto) been considered? § 3.02[3][a]
- Does the testator wish to revoke the prior will conditionally? § 3.02[9]
- Has the testator been advised that revocation may possibly be affected by the following: inconsistent provisions of a subsequent will, § 3.02[1]; certain marriages, § 3.02[4]; an afterborn child, § 3.02[5]; divorce or annulment, § 3.02[6]; conveyance or agreement affecting property testamentarily disposed of, §§ 3.02[7], [8]

§ 1.07 Analytical Checklist 1.03: Where to Find Analysis Regarding Questions Affecting All Wills

Application of Laws of Another Jurisdiction

- Are any provisions of the will affected by the laws relating to a jurisdiction other than New York? The validity of a disposition of personal property generally is governed by the law of the testator's last domicile, while the law of the situs governs the distribution of real property. § 4.02

Will Contest

- Does testator wish a provision providing for the forfeiture of a disposition should a beneficiary contest the will? § 4.02[3]

Debt and Funeral Payments

- Is there any necessity for a direction for the payment of debts? § 4.03
- Does the testatrix understand that funeral expenses are to be paid out of her estate? § 4.03[1][c]
- Are debts to be paid out of any specific property of the testator? § 4.03[2]
- If any property specifically disposed of is mortgaged, pledged, or subject to any lien, shall the mortgage, pledge, or lien be paid out of the general assets of the estate or out of the specifically disposed property? In the absence of a specific indication to the contrary in the will, the specifically disposed property is received by the beneficiary subject to such mortgage, pledge or lien. § 4.03[1][b], [2][a]
- Shall debts secured by insurance policies payable to named beneficiaries (including so-called loans from insurance companies to testator) be paid out of the general assets of the estate? § 4.03[1][b]
- Where more than one disposition passing to different beneficiaries are pledged for the testator's debts which disposition is to be first used to pay the debt? § 4.03[2]

Funeral or Burial Instructions

- Any part of testator's remains to be used for scientific purposes? The testator should be advised to make arrangements other than through the will, which

may not be read until after the testator's remains have been disposed of.
§ 4.05[1]

- Any instructions to be prepared for the disposition of the testator's remains? Again, such instructions should be communicated separately from the will. § 4.05[3]
- Any direction desired for the amount of the funeral expenses? § 4.05[3]
- Any provision as to what expenditures are to be made as part of the funeral and cemetery expenses? Very often a testator wishes to make provisions for the care of a plot containing the remains of family members. Such desire should be explicitly expressed in the will. § 4.05[3]

Domicile

- Is the domicile of the testator to be recited? Where the question of domicile may arise, a recital could be helpful. § 4.02[1]

Estate Taxes

- Are any testamentary or nontestamentary dispositions to be exempt from their pro rata burden of estate taxes? In the absence of an explicit direction in the will, estate taxes will be equitably apportioned against all property, testamentary and nontestamentary, included in the gross estate. § 4.04 Forms 2-4, 6, 14 in § 4.04[21][b]-[d], [f], [n]
- If equitable apportionment is desired, has a specific provision been inserted? § 4.04 Form 1 in § 4.04[21][a]
- Is any property not passing under the will to be exempt from a pro rata share of taxes, i.e., inter vivos trusts; gifts made in contemplation of death; jointly held property; life insurance; and property subject to power of appointment? If so, an explicit provision in the will to that effect is required. § 4.04 Form 4 in § 4.04[21][d]
- If the surviving spouse is given a portion of the residuary estate, does the testator wish that the estate taxes be paid out of the other portions of the residuary estate in order to obtain the maximum federal estate tax marital deduction and to simplify its calculation? § 4.04 Form 6 in § 4.04[21][f]
- If the surviving spouse is given a portion of the residuary estate, does the testator wish that the estate taxes be paid out of the marital share in order to obtain the maximum credit shelter gift by taking advantage of the deduction for state death taxes under IRC § 2058? § 4.04 Form 15 in § 4.04[21][o]
- Are estate taxes to be treated as an expense of administration? § 4.04 Form 7 in § 4.04[21][g]
- If a true common-law annuity is created, does the testator wish it to be free of any estate tax burden? § 4.04 Form 5 in § 4.04[21][e]
- If a disposition is made pursuant to a contract, what provision, if any, is to be made as to estate tax contributions? § 4.04 Form 9 in § 4.04[21][i]

- If the residuary estate should be insufficient to pay estate taxes, what provision is to be made? § 4.04 Form 14 in § 4.04[21][n]
- If a debt to the testator is forgiven, shall the debtor pay a pro rata share of estate taxes or *all* estate taxes resulting from the inclusion of the debt in the gross taxable estate? § 4.04 Forms 10, 11 in § 4.04[21][j], [k]
- If the testator elects not to exercise a power of appointment, shall the persons taking in default of the exercise of the power pay a pro rata share of estate taxes or *all* estate taxes resulting from the inclusion of the appointive property in the gross taxable estate? § 4.04 Forms 12, 13 in § 4.04[21][m], [n]
- If the testator is the beneficiary of a Qualified Terminable Interest Property Trust, does he wish to vary the statutory provisions as to estate tax contributions? In the absence of a provision to the contrary, the surviving spouse's estate may recover from the recipients of the property the additional estate tax resulting from the inclusion of the property in the surviving spouse's gross taxable estate. § 4.04 Form 8 in § 4.04[21][h]
- Who will bear the burden of generation-skipping transfer taxes? § 4.04 Form 16 in § 4.04[21][p]

§ 1.08 Analytical Checklist 1.04: Where to Find Analysis Regarding Dispositions of Property

Abated Dispositions

- If the estate assets are insufficient to pay all general dispositions in full, will any of them have priority of payment? In the absence of a provision to the contrary in the will, the question is governed by statute. § 5.01[5][a]

Adeemed Dispositions

- Are any provisions to be made with respect to adeemed dispositions? Consideration should be given to whether the beneficiary should be entitled to the proceeds of the sale of any such property, and to whether the testator wishes to make a substituted bequest. § 5.01[5][b]

Advancements

- Are any gifts made during the testator's lifetime to be taken on account of any of the testamentary dispositions? § 5.01[5][c]

Common Disaster

- Does the testator wish to make provisions for a gift over should any of the beneficiaries survive him for only a short time? Use of the typical "common disaster" provision may not effectuate the testator's intent where death of the testator and beneficiary occur within a short period of time but either (1) not as the result of a common disaster or (2) in a common disaster where the order of death is not at issue. § 5.03

Conditional Dispositions

- Are the conditions valid? § 5.02

Dispositions as Charge on Property

- Is the gift not to be a conditional one but subject to a charge or lien? § 5.02[1][d]

Contractual Dispositions

- If the testator is obligated by contract to make any testamentary disposition, does the will indicate that such dispositions are made in satisfaction of such obligations, and whether the beneficiary is free of any obligation for estate tax contribution. It is, of course, imperative to review any such documents (for example, separation agreements and buy-sell agreements) to determine the testator's responsibilities thereunder and their effect upon the estate plan. § 5.02[1][h]

Demonstrative Dispositions

- Are any general dispositions payable from specific property? § 5.01[2]

General Dispositions

- For a specific purpose? § 5.01[4]
- Payable in stock? § 5.01[4][b][iii]
- Payable in securities in lieu of cash? § 5.01[4][b][i]
- In satisfaction of a moral obligation or indebtedness, and is it to abate if the beneficiary predeceases the testator? § 5.01[4][b][iv]

Postponement or Acceleration of Payment or Delivery of Dispositions

- Are any of the dispositions to be paid either sooner or later than provided by law? § 5.01[4][c]
- Is any provision to be made for interim income earned on postponed dispositions? § 5.01[4][c][i]
- If the beneficiary dies before receiving a postponed disposition, is there to be a gift over? § 5.01[4][c][ii]

Precatory Dispositions

- Is it clear (1) that the request is not mandatory by its terms, and (2) if the request is precatory, that the beneficiary will be free to use the gift as he wishes? § 5.02[1][e]

Renounced or Disclaimed Dispositions

- Does the testator wish to provide for a gift over should any of the beneficiaries disclaim their respective dispositions? For example, where a testator leaves his entire estate to his spouse, has consideration been given to creation of a trust for her benefit to receive any disclaimed property? § 5.04
- Will a disclaimer inadvertently trigger the generation-skipping tax? §§ 5.04[2] and 16.09

Selected Dispositions by Executor

- Is it clearly provided as to whether or not the executor may exercise the

power in his own favor? § 5.02[1][f][i]

Selected Dispositions by Beneficiary

- Is there any limitation on the time within which the beneficiary may make the selection? § 5.02[1][f][ii]

Specific Dispositions

- If the property is not owned by the testator, at the time of his death, does he wish to make a substitute disposition? § 5.01[3]
- If the disposition is the contents of a safe deposit box or other container, are such contents to be determined as of the time of the execution of the will or as of the testator's death? § 5.01[3][b]
- Are any of the contents to be excluded? § 5.01[3][b]
- If there is a specific disposition of real property, is the testator's interest at the date of death or at the date of the will execution intended? § 5.01[3][c]
- If a specific disposition of tangible personal property, who is to bear the expense of delivery? In the absence of a specific provision to the contrary, the expenses are borne by the beneficiary. § 5.01[3][d]

Disposition of Automobiles

- Is testator's automobile to be specifically mentioned? A specific disposition is recommended to avoid any questions of construction. § 5.07[1][b]

Disposition of Bank Accounts

- If the funds of a bank account are withdrawn prior to the testator's death, are other provisions to be made with respect thereto? § 5.07[2][a][i][A]
- Are any savings bank Totten trusts to be revoked by the will? The testator should be advised that the funds held in these accounts pass outside the will to the named beneficiary unless so revoked. The testator should also be advised as to the problem which arises if the beneficiary is a minor. § 5.07[2][a][i][B]

Disposition of Burial Lots

- Are burial lots to be specifically disposed of; and if not, is the devolution understood by the testator? Absent a disposition, the plot will pass to the following persons in the following order: (1) the surviving descendants, (2) the surviving spouse, or (3) the plot owner's distributees. § 5.08[3]

Disposition of Testator's Business

- If specifically disposed of, is the business adequately described? § 5.07[2][f][i]
- Is the interest a partnership interest? Is there a partnership agreement in existence which limits the ability of the testator to dispose of his interest? § 5.07[2][f][ii]

Discharge of Claims and Debts Due to Testator

- Are *all* debts to be discharged or only the following debts:
 - those due from the testamentary beneficiaries,
 - those due at the execution of the will,
 - those due at the testator's death? § 5.07[2][a][iv]

College Savings Plans

- Is the testator the owner of a college savings plan? § 5.10

Disposition of Contents of Safe Deposit Box, Desk, or Other Container

- Are contents to be determined as of the time of the execution of the will or of the testator's death? § 5.01[3][b]

Disposition of Condominium and Cooperative Apartments

- Is the condominium or cooperative apartment to be specifically disposed of? §§ 5.07[2][d], 5.08[2]
- Is the cooperative apartment understood to be personal property? § 5.07[2][d]
- Is the condominium understood to be real property? § 5.08[2]
- Is it clear whether the testator owns a condominium or a cooperative apartment? §§ 5.07[2][d], 5.08[2]

Disposition of Copyright

- Does the testator wish to make a disposition of separate rights embraced in his copyright? § 5.07[2][b][i]
- Does the testator wish to affirm his prior inter vivos grants or licenses to prevent termination of an inter vivos grant or license executed after January 1, 1978? § 5.07[2][b][i]
- Has consideration been given to specific bequests of an author's personal papers and memorabilia? § 5.07 Form 11 in § 5.07[3][k]

Disposition of Foreign Currency

- Is the disposition to be in foreign currency or in American dollars equivalent to foreign currency, valued at the date of the will, or of death, or of payment or according to a gold standard? § 5.07[2][a][ii][B]

Disposition of Foreign Real Property

- Have the following been considered § 5.08[4]:
 - Validity of the disposition under foreign law?
 - Will the foreign jurisdiction apply New York law?
 - Will the construction of the dispositive provision be determined differently from the New York law construction?

- Do any beneficiaries have a claim to the property under foreign law?
- Will the property be classified as personal or real property under the foreign law?

Disposition of Household Goods and Personal Effects

- If there is a specific gift of the household goods, consider whether there is any conflict arising from the use of the phrases “personal effects,” “effects” or “other personal effects”? § 5.07[1][a]
- Does the testator understand exactly what will pass under this disposition? § 5.07[1][a]
- The testator must consider carefully whether certain items of personalty should be specifically mentioned to avoid any confusion as to their disposition. § 5.07[1][a]
- Does the testator desire that the insurance policies insuring the disposed of property be transferred to the beneficiary? § 5.07 Form 1 in § 5.07[3][a]

Disposition of Proceeds of Insurance Policy

- If the proceeds of an insurance policy are specifically disposed of, check whether the insurance is payable to the estate. The provisions of a will do not revoke the beneficiary designation under the policy. § 5.07[2][c][i]
- Is a disposition to a testamentary beneficiary to be in lieu of the proceeds of an insurance policy? § 5.07[2][c][ii]
- If the testator has insurance payable in installments to his surviving spouse, is the balance of the installments due after the death of the surviving spouse to be paid to her estate or pursuant to her sole power of appointment? § 5.07[2][c][ii]
- If the testator desires the executor to purchase an insurance annuity, is there a direction that the insurance shall be “nonassignable” to prevent the annuitant from having a right to elect to take the capital sum in lieu of the annuity? § 5.07[2][c][iii]

Intestate Share

- Does the testator understand that this share may be different from the “elective” share? § 6.03[1], § 14.04

Disposition of Money

- Does the testator understand that the use of the word “money” is undesirable? § 5.07[2][a][ii][A]

Net Testamentary Estate

- Does the testator understand that a reference to the “net testamentary estate” means the gross testamentary estate less debts and funeral and administration expenses, and it should not be confused with “residuary estate” or “gross estate”? § 5.09[2]

Options to Purchase Property

- Is the purchase price at which and the time within which the option may be exercised clearly stated? § 5.07[2][e]
- If the option is to purchase at “book value,” will there be any question as to the meaning of that term? § 5.07[2][e]

Disposition of Property Acquired from Another

- If property acquired from another is to be specifically disposed of and it is not owned at the testator’s death or cannot be identified, does the testator wish to give the beneficiary a sum equivalent to the value of such property? § 5.09[1]

Disposition of Real Property

- Is the disposition to be of the testator’s interest at the time of the will execution, or at the time of the testator’s death? § 5.08[1]
- If real property is located in a foreign jurisdiction, see this checklist under

Disposition of Foreign Real Property *above.***Disposition of Residuary Estate**

- Is the nature and extent of the “residuary estate” understood by the testator? § 5.09[3]
- If the gift is of a fixed sum of money or a fraction of the residuary estate, whichever is less, has the testator clearly in mind the customary meaning of “residuary estate”? § 5.09[3]
- Does the testator wish to allocate specific property to a disposition of a specific share of the residuary estate? § 5.09[3][c]
- If the surviving spouse is given a portion of the residuary estate, does the testator wish estate taxes to be paid out of the other portions of the residuary estate in order to obtain the maximum estate tax marital deduction? **Chapter 7**
- Should there be a lapse of a gift of any portion of the residuary estate, have provisions been made for a gift over? In the absence of a provision, the question is governed by statute. § 5.09[3][d]
- Does the testator wish to expressly negative an intention to exercise a power of appointment? § 5.09[3][e]

Disposition of Securities

- Is the disposition of “securities” adequately described? § 5.07[2][a][iii]

Unified Transfer Tax Credit

- Would the use of a unified transfer tax credit disposition be appropriate? The drafter should consider use of one of the following formats for the disposition: (1) a trust for the spouse that is not intended to qualify for the marital deduction, (2) a sprinkling trust for spouse and issue, or (3) a trust for,

or an outright bequest to, issue. § 5.09[4]

- If such disposition is to be used, should the disposition be by a pecuniary or a fraction of residuary estate disposition? § 5.09[4]

§ 1.09 Analytical Checklist 1.05: Where to Find Analysis Regarding Specific Beneficiaries

Dispositions to Adopted Children

- Are there any equitably adopted children? § 6.04[1][a][ii]
- Are adopted children or their issue to be excluded or included in a gift to a class? Unless provided to the contrary, a disposition to issue, children, descendants, etc. includes adopted children and their issue. § 6.04[1][a]
- Does the testator want to provide that persons adopted after a specified age are not to be included in a disposition to issue? § 6.05 Form 13 in § 6.05[15]

Dispositions to Attorney-Drafter

- Does the drafter and the testator understand that the drafter is not to be a testamentary beneficiary? Has the potential attorney-legatee advised the testator to seek independent counsel to draft the will? § 6.06[9]

Dispositions to Brothers or Sisters

- Is there to be a provision against a statutory gift over if a brother or sister predeceases the testator? Absent such a provision, the anti-lapse statute governs. § 6.04[2][c]
- Consider provision for gift over for issue of the brothers and sisters who were not living at the date of the will execution? § 6.04[2]

Dispositions to Children, Grandchildren, Issue

- If there is a disposition to children as a class, § 6.03, are the following included:
- Adopted children? § 6.03[6]
 - Descendants? § 6.05
 - Grandchildren? § 6.04[2][b]
 - Non-marital children? § 6.04[1][b]
 - Issue? § 6.05[1][b]
 - Stepchild? § 6.04[3][d]

It is strongly recommended that the testator specify his wishes, particularly as to adopted and nonmarital children.

- If there is a disposition to children and issue of predeceased children, does it include children who were not living at the date the will was executed? § 6.04
- Does a gift to grandchildren include great grandchildren? § 6.04[2][b]
- What are the rules regarding children conceived after the death of a genetic

parent? §§ 6.03[7], 6.04[1][c]

- Is the disposition to grandchildren affected by the generation-skipping transfer tax? **Chapter 16**

Dispositions to Corporations

- Has the corporation capacity to take by will? § 6.06[4][a]
- Is the disposition to a branch of a corporation? § 6.06[4][b]
- If the corporation is to be formed after the death of the testator, does the direction as to formation comply with the rule against perpetuities? § 6.06[4][c]
- If a corporation is to be formed to carry on the testator's business, are its powers defined? § 6.06[4][c]

Dispositions to Cousins

- If the gift is to a class, is it intended to include first cousins, cousins once removed, or second cousins? The drafter should make the testator aware of the distinctions among these terms. § 6.04[3]
- Are any cousins to be explicitly disinherited? § 6.09

Dispositions to Creditors

- Is the disposition to be in satisfaction of a debt or in addition thereto? § 6.06[6][b]
- Is the disposition to be in satisfaction of debts or claims existing at the execution of the will or at the testator's death? § 6.06[6][b]
- Is the gift to lapse should the creditor predecease the testator? § 6.06[6][b]

Dispositions to Custodians Under the New York Uniform Transfers (Gifts) to Minors Act

- Is the executor to be authorized to distribute a disposition to an infant to a designated custodian, or a custodian selected by the executor? Does the testator want to provide for the custodianship to continue until age 18? If not so specified, distribution to the beneficiary will be at age 21. § 6.06[2][b][iii]

Dispositions to Debtors

- Is the disposition to the testator's debtor deemed to be a waiver of any claim of the debtor-beneficiary? § 6.06[6][a]
- Is the debt to be set off against the disposition? § 6.06[6][a]

Dispositions to Descendants

- Who is to be included in that category? § 6.05[1][b]

Dispositions to Distributees, Heirs at Law, and Next of Kin

It is imperative that the drafter review with the testator who his distributees are. When it is sought to have the will admitted to probate, the distributees must be cited

and thus given the opportunity to contest the will. Where the testator has lost track of the distributees, or does not know who they are, efforts should be made to obtain that information while the testator is alive and able to assist in the search.

- If distribution is to be made to distributees, heirs at law, or next of kin, is the applicable law to determine the members of the class to be that of the domicile of the testator or some other law? § 6.05[1][a]
- Is the computation of intestate distribution clearly understood? § 6.03[5][1][b]

Dispositions to Employees or Servants

- If the distribution is a class gift, is it clear who is included within that category? § 6.06[7][a]
- If the disposition depends upon the number of years of employment with the testator, must the employment be continuous? § 6.06[7][b]
- If the disposition is to a named employee, must he be in the employ of the testator at the time of the testator's death? § 6.06 Forms 23, 34 in § 6.06[32], [33]

Dispositions to Executors or Trustees

- Is the disposition to the fiduciary for his individual benefit or in a fiduciary capacity? § 6.06[8][a][i]
- If an executor or a trustee is a beneficiary, is the disposition to him to be in lieu of or in addition to commissions? §§ 6.06[8][a] and [b]
- If the disposition is in lieu of executor's or trustee's commissions, is the disposition payable upon the executor or trustee qualifying or must he complete his duties? § 6.06 Forms 25, 26 in § 6.04[34], [35]

Dispositions to Family

- Has the testator been advised against a disposition to his "family" because of the uncertainty of its meaning? § 6.05[1][c]

Dispositions to Half-Blood Relatives

- If the disposition is to a class of blood relatives, does the testator wish to include relatives of the half-blood but not step-relatives? A disposition to siblings includes half-bloods, unless otherwise provided. §§ 6.04[3][c], [d]

Dispositions to Husband or Wife

- See Chapter 8, § 6.04[1], and Chapter 10, *below*

Dispositions to Incompetents or Infants

- Are any of the beneficiaries incompetents or infants? §§ 6.06[2], [3]
- Has the testator considered the alternative methods of absolute distribution to incompetent beneficiaries? Is the incompetent an inmate of a public institution entitled to benefits? § 6.06[3]

- Has the testator considered the alternative methods of absolute distribution to an infant beneficiary? § 6.05
- Has the testator considered a disposition to the infant in trust in lieu of an absolute disposition? § 8.02[1]

Dispositions to Issue

- Does the testator understand the effect of a disposition to “issue”? § 6.05[1][b]
- Does the testator wish the application of the statutory gift over? § 6.05[a][b]
- Is a per stirpes or per capita distribution intended? § 6.05[2]

Dispositions to Nieces and Nephews

- Does a gift to nieces or nephews as a class include grandnieces and grandnephews? § 6.04[3][b]
- Is the disposition to include nieces and nephews by marriage? § 6.04[3][b]

Dispositions to Nonmarital Children

- Are any provisions to be made for nonmarital children? Is the testator aware that the term “issue” is presumed to include nonmarital children? § 6.03[3]; see § 1.12[4], *above*

Dispositions to Pets

- Does the testator wish to provide for the care of any of his pets? § 6.06[10]

Dispositions to Posthumous Children

- Are they to be excluded in a disposition to a class? § 6.06[1][b]

Dispositions to Several Named Beneficiaries

- What are the various alternative interests which may be created? Has the testator considered the ramifications of the creation of a joint tenancy, tenancy in common, or tenancy by the entirety, particularly where the beneficiaries are husband and wife? The drafter must carefully observe the statutory rules for the creation of the various interests. § 6.08
- If a single disposition is to be divided among several beneficiaries and one or more of them predeceases the testator, what disposition is to be made of their shares? § 6.08

Dispositions to Spouse

- See § 6.06[1] and Chapters 7 and 10, *below*

Dispositions to Step-Relatives

- Are step-relatives to be included among the beneficiaries in a class disposition to any category of relatives? § 6.04[3][d]

Dispositions to Survivor of Testator and Beneficiary Unknown

- Does the testator wish to make a provision, contrary to the statutory presumption? § 6.07

Dispositions to Trustee of Inter Vivos Trust

- Does the trustee have capacity to take the disposition of the testator under the New York statute? § 6.06[8][b]

Dispositions to Trustee of Testamentary or Inter Vivos Trust

- Are proceeds of testator's non-testamentary property payable to trustee? § 6.06[8][b][ii]

Dispositions to Trustee, Executor, or Beneficiary Under Will of Another

- Is the disposition to any of such beneficiaries void? § 6.06[8][c]

Dispositions to Unincorporated Association

- Has an unincorporated association capacity to take a testamentary disposition and, if not, will it have authority to incorporate subsequent to the testator's death? § 6.06[5]

Dispositions to Younger Generation Beneficiary

- Will a disposition to an unrelated younger person be subject to the generation-skipping tax? § 6.06[8] and Chapter 16

§ 1.10 Analytical Checklist 1.06: Where to Find Analysis Regarding Rights of Surviving Spouse**Rights of Surviving Spouse In General**

- Are the rights of the surviving spouse for decedents dying on or after September 1, 1992, generally understood, including the origin of these rights? § 7.02
- Are the rules understood for determining who is entitled to rights as a surviving spouse? § 7.03
- Does the testator understand that his or her surviving spouse is entitled to various items of exempt property, and that actions can be taken to ensure that exempt property passes to others? § 7.06
- Does the testator understand the intestate rights of his or her surviving spouse, and that specific action can be taken to prevent the surviving spouse from receiving intestate benefits? § 7.07

Right of Election

- Does the testator generally understand the dramatic changes in the surviving spouse's right of election? § 7.08
- Are the specifics of the right of election understood, including:
 - How is the net estate calculated? § 7.08[2]
 - What is the surviving spouse's entitlement under the right of election statute? § 7.08[3]
 - What are considered testamentary substitutes? § 7.08[4]

- What are the general and procedural provisions under the right of election system? § 7.08[5]–[6]
- What are the tax ramifications under the right of election system? § 7.08[7]
- Does the testator understand the numerous planning possibilities? § 7.09
- How does the testator want to draft his or her will in anticipation of a right of election? § 7.10

Waiver of Rights as Surviving Spouse

- Does the testator understand that his or her spouse may waive rights as a surviving spouse? § 7.11
- Have the tax consequences, and reasons for, waivers been considered? § 7.11[3]
- What instrument will be appropriate to effectuate a waiver? § 7.11[4]
- Has the testator considered the special rules for waiving qualified plan benefits? § 7.12

Community Property on Estate Plan

- Does the testator understand the impact of community property on the estate plan? § 7.13

§ 1.11 Analytical Checklist 1.07: Where to Find Analysis Regarding Dispositive Provisions in Testamentary Trusts

Testamentary Trusts in General

- Does the drafter know the many tax and non-tax reasons to create a testamentary trusts? § 8.02
- Does the drafter understand that a fiduciary relationship will be created under a testamentary trusts? § 8.03
- Does the drafter know the requirements to create a testamentary trusts? § 8.04
- Does the drafter know the limitations on trust duration, including the application of New York's rule against perpetuities? § 8.05
- Does the drafter know how a testamentary trust may be amended or revoked before the testator dies? § 8.06
- Does the drafter understand the rights of trust beneficiaries in testamentary trusts? § 8.07
- Does the drafter know the rules that apply on trust termination? § 8.09
- Has the drafter considered the desirability of a perpetuities saving clause? § 8.05[6]

(Text continued on page 1-21)

- Does the drafter know the general federal income tax rules for taxing testamentary trusts and trust beneficiaries? § 8.24 Does the drafter know the planning and drafting considerations? § 8.24[2]

Spendthrift Rules and Drafting of Spendthrift Clauses in Testamentary Trusts

- Does the drafter know the differing rules for the spendthrift of income and principal interests? § 8.08
- Does the drafter know that a spendthrift clause is necessary if the testator wants to bar voluntary and involuntary alienation of the principal interest? § 8.08

Drafting for Disposition of Trust Income and Principal

- Does the drafter know the range of options when drafting for the disposition of trust income and the appropriate forms to use once the type of trust provision has been determined, including the use of spendthrift provisions? §§ 8.10–8.14
- Does the drafter know the range of options when drafting for the disposition of trust principal and the appropriate forms to use once the type of trust provision has been determined? § 8.15

Specialized Trusts

- Has the drafter considered drafting for a residence in trust, the drafting for an educational trust or a statutory supplemental needs trust? § 8.21
- Has the drafter considered the use of an annuity trust? § 8.22
- Has the drafter considered the use of a private unitrust? § 8.23

§ 1.12 Analytical Checklist 1.08: Where to Find Analysis Regarding Powers of Appointment

Reasons for Using Powers of Appointment

- Does the drafter know the many beneficial reasons for using powers of appointment? § 9.02 For example, the creation of a power to appoint among the members of a class may enable the donee of the power to consider the changes in the circumstances of the class members long after the testator's death.

Creation of Powers of Appointment

- Does the drafter know the relevant terminology under power of appointment devices? § 9.03
- Does the drafter know the different ways that powers of appointment may be classified?
- What are the rules for creating powers of appointment? § 9.05
- What general drafting considerations should be taken into account when creating powers of appointment in wills? § 9.06[1]–[5]

- Have creditors' rights issues been considered? § 9.08
- Have the federal tax consequences to the power holder been considered? § 9.09
- What forms might be used when creating powers of appointment in wills? § 9.06[6]

Exercise of Power of Appointment

- When exercising a power of appointment, have the requirements for exercise been considered and followed? § 9.07[1]–[2] and [4]

Exercise of Power of Appointment in Further Trust

- What court will have jurisdiction of the trustees of the continued trust? § 9.07[3][b]
- Who are the permissible trustees? § 9.07[3][c]
- Will the trustees' powers be those provided in the will of the donor or of the donee? § 9.07[3][d]
- Should the trustees of the continued trust be paid additional commissions? § 9.07[3][e]
- May the beneficiaries of the continued trust be granted a further power of appointment? § 9.07[3][f]
- Is there any violation of the general New York rule against perpetuities and unlawful accumulations, as well as the special provisions with respect to appointive property being continued in further trust? § 9.07[3][g]

Appointee of Power of Appointment

- What provision should be made if the appointee predeceases the donee-testator? § 9.07[5]
- If the appointee predeceases the testator will the anti-lapse statute apply to the appointment? § 9.07[5]
- If the appointee is an infant, does the donee desire to appoint a person to be the donee of a power during minority to manage the appointive property? § 9.07[8]

Contract to exercise

- May a contract be validly made to exercise a power? § 9.07[6]

Release of power

- What are the rules for releasing a power of appointment? § 9.07[6]

Forms

- What forms can be used to exercise powers of appointment? § 9.07[9]

Creditors' Rights

- Under what circumstances can creditors reach property subject to a power of appointment? § 9.08

Taxation

- Have the estate tax and gift tax consequences to the donee of the power been considered? § 9.09[1], [2]
- Has the impact of the generation-skipping tax been considered? § 9.09[3]
- Has the impact of income taxes been considered? § 9.09[4]

§ 1.13 Analytical Checklist 1.09: Where to Find Analysis Regarding Legal Life Estates and Remainders**Nature of Legal Life Estates and Remainders**

- Is the drafter aware of the legal life estate-remainder arrangement? § 10.02
- Does the drafter know the non-tax and tax aspects of legal life estates? §§ 10.03–10.04

Reasons to Use Legal Life Estate-Remainder Arrangement

- Has the drafter considered whether the legal life estate-remainder arrangement might be more appropriate than creating a testamentary trust? § 10.05 Although not used as often as a testamentary trust, the legal life estate-remainder arrangement should be considered in lieu of a trust if the testator (1) wishes to avoid the expense of trust administration, and (2) has confidence in the ability of the legal life tenant to manage the property.

Drafting Options for Legal Life Estates

- There are numerous drafting options for legal life estates besides the traditional legal life estate. § 10.06
- The drafter needs to consider whether default rules should be changed in traditional legal life estates (as well as other types of legal life estates).
- § 10.07 The testator may wish to create limited legal life estates, referred to as defeasible legal life estates, § 10.08, or enhanced legal life estates where the legal life tenant is given powers of consumption or disposition. § 10.09
- The testator may want to consider concurrent legal life estates, § 10.10, and in rare cases, life estates *pur autre vie*. § 10.11

Drafting Options for Legal Remainders

- The drafter needs to be familiar with general drafting considerations with respect to legal life estates. § 10.11
- Although remainders for life are a possibility, § 10.13, legal remainders in fee for real property or the equivalent for personal property will be necessary in all cases. § 10.14

Drafting Complete Disposition of Property with Legal Life Estates and Remainders

- If the testator wants to use a legal life estate-remainder arrangement, complete dispositions will be the end product. The drafter may consider

various examples complete dispositions for legal life estate-remainder arrangements appropriate. § 10.15

§ 1.14 Analytical Checklist 1.10: Where to Find Analysis Regarding Fiduciaries

Need to Inform Testator of Extent of Fiduciary's Commissions

- Has the testator been advised of the extent of the fiduciary's commissions payable to the drafter or a person in whom the drafter has a pecuniary or personal interest? § 11.02[6]

Types of Fiduciaries

- Are any of the following to be appointed:
 - Executor? § 11.03[1]-[4]
 - Trustee? § 11.03[1]-[4]
 - Guardian? § 11.04[1]
 - Donee of a power during minority? § 11.05
 - A literary executor or trustee? § 11.03[5]

Fiduciary's Capacity to Act

- Will the fiduciary be disqualified because of any of the following reasons, § 11.02[2]:
 - Fiduciary is an infant?
 - Fiduciary is an incompetent?
 - Fiduciary is an a nonresident alien except a foreign guardian?
 - Fiduciary is an a felon?
 - Fiduciary is incompetent to act because of drunkenness, dishonesty, improvidence, or want of understanding?
- Can the fiduciary read and write the English language? § 11.02[3]
- Has the testator been advised that certain objections may be removed by filing a bond? § 11.02[5]
- If a corporation is nominated, is it a trust company organized under the laws of the State of New York or a federal reserve bank authorized to do business

(Text continued on page 1-25)

in New York or, if it is a foreign company, is it qualified to do business in New York? § 11.02[1]

If an income beneficiary is nominated as a trustee, is he the sole trustee? § 11.02[4]

- If a person to be appointed is an infant, is his appointment to be effective upon attaining age 18? § 11.03[3]

Nomination of Executor or Trustee by Person Other than Testator

- Is the nomination of an executor or trustee to be made by a person other than the testator? § 11.03[4]

Conditional Appointment of Fiduciary

- Is the appointment of the executor or trustee subject to any conditions? § 11.03 Form 5 in § 11.03[7][e]

Separate Executors for Separate Jurisdictions

- Is the fiduciary competent to qualify under the laws of a jurisdiction other than New York? § 11.03 Form 7 in § 11.03[7][g]
- Will the appointment of an ancillary executor be required because of the location of assets outside the State of New York and, if so, is it desirable to dispose of the assets to avoid ancillary administration? § 11.03 Form 7 in § 11.03[7][g]

Number of Executors or Trustees Who May Act

- If more than one trust, are different trustees to be named for the different trusts? § 11.03[1]
- Is a fixed number of executors or trustees to act at all times? § 11.03 Form 8 in § 11.03[7][h]

Successor or Substitute Executors or Trustees

- Should provisions be made for a substitute or successor in the event the original executors or trustees do not qualify or cease to act? § 11.03[6]
- Shall a successor executor or trustee be appointed by his predecessor? § 11.03[6]
- Shall a successor co-executor or co-trustee be appointed by a surviving co-executor or co-trustee? § 11.03[6]

Guardians

- Is a testamentary guardian of the person or the property of the testator's infant children to be appointed? § 11.04
- If the proposed guardian is not the surviving parent of the infant beneficiary or is nominated by a person other than the surviving parent of the infant beneficiary, is the nomination valid as a power? § 11.05[1]
- Are the powers of the guardian sufficient? § 11.04[2]

- Is a substitute or successor guardian to be appointed? § 11.04[3]

Appointment of Donee of Power During Minority

- Is such an appointment for infant beneficiaries desirable? § 11.05[1]
- What powers are to be granted to the donee? § 11.05[2]
- Are any special provisions to be made for compensation? § 11.05[2]
- Is it understood that the donee is a separate tax entity for income tax purposes? § 11.05[1]
- Is a donee for an adult beneficiary desired? § 11.05 Forms 3 and 4 in § 11.05[4][c], [d]
- Are executors or trustees or other persons to be nominated? § 11.05 Forms 3 and 4 in § 11.05[4][c], [d]
- Is a substitute or successor donee to be appointed? § 11.05 Forms 1 and 2 in § 11.05[4][a], [c]

Compensation of Fiduciaries

- Is the compensation of the fiduciary to be an amount other than the statutory commissions? § 11.07
- Does the testator wish to provide that in lieu of statutory commissions the fiduciary receive:
- No compensation? § 11.07[1], § 11.07 Form 1 in § 11.07[7][a]
 - Specific compensation? § 11.07[2]
 - A testamentary disposition in lieu of statutory commissions? § 11.07[3], § 11.07 Form 2 in § 11.07[7][b]
- Or does the testator desire a written agreement for compensation? § 11.07[4]
- If the fiduciary is to act as a corporate director, officer, or employee, does the testator wish to provide that he may receive additional compensation for such services? § 11.07[5], § 11.07 Form 3 in § 11.07[7][c]

Bond of Fiduciary

- Does the testator wish to require a bond of the executor? § 11.08[2]
- Does the testator wish to dispense with a bond for a trustee or an executor acting as a trustee, a legal life tenant, a guardian or a donee of a power during minority? § 11.08
- Has the testator been advised of the amount required of a fiduciary and how such amount may be reduced? § 11.09

Removal of Fiduciary

- Is any provision to be made for the removal of a corporate fiduciary by an individual or a beneficiary? § 11.10[2], § 11.10 Form 3 in § 11.10[4][c]
- Does the testator wish to provide for the removal of a trustee when he or she

reaches a specified age? § 11.10[2], § 11.10 Form 2 in § 11.10[4][b]

Resignation of Fiduciary

- Does the testator wish to provide for the resignation of a fiduciary? Absent such a provision, the court may withhold approval of a resignation. § 11.10[3]

Liability of Fiduciary to Third Persons

- Is the testator aware of the fiduciary's possible liability to persons other than those with beneficial interests in the property? § 11.11

§ 1.15 Analytical Checklist 1.11: Where to Find Analysis Regarding Fiduciary Powers

Fiduciary Powers in General

- New York effectively provides that numerous fiduciary powers apply to executors and trustees unless a will or trust provides otherwise. § 12.02 These powers are referred to as special powers and are listed in alphabetical order. § 12.04
- Several powers, however, do not automatically apply by statute. § 12.02 These are referred to as non-special powers and are listed in alphabetical order. § 12.05
- With respect to special powers, the drafter needs to consider whether any such powers are not appropriate and draft the appropriate provision to modify or eliminate the default power. § 12.05 The drafter must also consider whether any non-special powers are appropriate and draft accordingly. § 12.05

Independent Fiduciary Powers

- Each fiduciary power has its own nuances and aspects. §§ 12.04–12.05 Several independent fiduciary powers are grouped into more general categories, although others are treated in individual sections.

Comprehensive Fiduciary Powers

- The drafter may wish to use a comprehensive form for fiduciary powers. § 12.06

Fiduciary Power to Adjust and Unitrust Provisions

- The drafter should be aware of the power to adjust under EPTL 11-2.3(b)(5) and unitrust provisions pursuant to EPTL 11-2.4. § 12.03[6]

§ 1.16 Analytical Checklist 1.12: Where to Find Analysis Regarding Principal and Income

- What is the effect of New York's Uniform Principal and Income Act? §§ 13.02–13.06

§ 1.17 Analytical Checklist 1.13: Where to Find Analysis Regarding Marital Deduction

Federal Estate Tax Marital Deduction Rules

- Does the drafter understand the significant changes that were made by the

Tax Act of 2012 and how they impact on marital planning and drafting?

Chapter 14

- Does the drafter understand the current federal marital deduction rules which are indispensable for planning and drafting marital deduction provisions? §§ 14.05–14.08
- Does the drafter understand the impact of the Supreme Court decision that invalidated Section 3 of the Defense of Marriage Act? § 14.05
- Does the drafter understand the new portability rules? § 14.09
- Does the drafter understand the new New York estate tax system and how such taxes may be eliminated or reduced by proper planning and drafting? § 14.11
- Does the drafter understand that existing wills may need to be revised to take into account the new New York estate tax system? § 14.11
- Does the drafter understand the marital deduction planning options, taking into account the Tax Act of 2012 and the new New York estate tax system? § 14.12
- Is the drafter aware of the numerous marital deduction drafting considerations? § 14.13
- Does the testator understand the problems if the surviving spouse dies within a short period after the testator? § 14.14

Form Options with Respect to Marital Deduction

- Does the testator understand that there are various qualifying form options? § 14.15
- Has the testator considered the use of a trust (or trust equivalent arrangement) including:
 - A form of life estate-power of appointment trust, § 14.16
 - A form of a QTIP trust, § 14.17
 - Necessary administrative provisions, § 14.18
 - Possible tax provisions? § 14.19
- Has the testator considered less popular forms for marital deduction qualification, including:
 - Estate trusts, § 14.20
 - Charitable remainder trusts, § 14.21
 - Insurance arrangements? § 14.22

Reduce to Zero Formula Provision

- Does the testator understand the reduce to zero scheme, and how the Tax Act of 2010 and the new New York estate tax systems impact on planning and drafting? § 14.23

- Does the testator understand the differences between pecuniary and residuary dispositions? § 14.24
- Does the testator understand why hybrid provisions may be appropriate and the choices available? § 14.25
- Does the testator understand various fine-tuning options for formula provisions? § 14.26
- Does the testator wish to mandate the making of a portability election? § 14.27
- Does the testator understand other possible marital deduction schemes? § 14.28
- What considerations should be taken into account when New York estate taxes will be payable? § 14.28

Drafting for Post-Mortem Actions

- Does the testator understand how disclaimers operate, and does the testator wish to draft in contemplation of a disclaimer? § 14.29
- Does the testator understand the flexibility of QTIP elections, and does the testator wish to draft in contemplation of partial QTIP elections? § 14.29
- Is there a possibility that the surviving spouse will be an alien, and if so, does the testator want to create a qualified domestic trust? § 14.29
- Does the testator wish to facilitate tax elections and decisions by the executor? § 14.30

Comprehensive Marital Deduction Provision

- Has the drafter considered using a comprehensive reduce to zero marital deduction provision? § 14.31

§ 1.18 Analytical Checklist 1.14: Where to Find Analysis Regarding Charitable Dispositions

Federal Tax Law of Charitable Organizations in General

- Does the drafter understand the federal tax classifications of charitable organizations, including what is a 501(c)(3) organization, a public charity, and a private foundation? § 15.02
- Does the drafter know the federal estate tax rules to obtain an estate tax charitable deduction? § 15.04[1]
- Does the drafter know the federal income tax rules for an estate or testamentary trust to obtain an income tax charitable deduction? § 15.04[2]

Applicable New York Trust and Other Rules Regarding Charitable Dispositions

- Does the drafter know New York's trusts and other rules that apply to

charitable dispositions, including the *cy pres* power of modification?
§§ 15.03 and 15.04

General Planning and Drafting Considerations Regarding Charitable Dispositions

- Does the drafter understand the difference between gifts solely for charitable organizations and gifts that are split between charitable organizations and private beneficiaries? § 15.05
- Does the drafter know the various types of charitable dispositions that can be made in favor of one or more charitable organizations, including outright bequests and bequests pursuant to testamentary trusts? §§ 15.06 and 15.07
- Does the drafter know about community foundations and the numerous options available for making charitable donations to community foundations? § 15.08

Drafting for Charitable Deduction Amount

- Does the drafter realize how the estate tax charitable deduction may be reduced by failing to take into account taxes and administration expenses? § 15.09[1]–[4]
- How can federal and New York estate taxes be eliminated by using reduce to zero formula provisions? § 15.09[5]

Split-Interest Dispositions

- Does the drafter know that an estate tax charitable deduction may be allowed for certain split-interest dispositions but disallowed for others and if an estate tax charitable deduction is allowed, special valuation rules apply for the different types of split-interest dispositions? § 15.10
- Does the drafter know the rules for bequeathing works of art? § 15.15[1]
- Does the drafter know the drafting rules for devising qualified conservation contributions? § 15.15[2]

Charitable Remainder Trusts and Other Charitable Remainder Dispositions

- Does the drafter know the general rules for drafting charitable remainder trusts? § 15.11[1]
- Does the drafter know the specific rules for drafting charitable remainder annuity trusts? § 15.11[2]
- Does the drafter know the specific rules for drafting charitable remainder unitrusts? § 15.11[3]
- Does the drafter know the specific rules for drafting pooled income funds? § 15.12
- Does the drafter know the specific rules for devising personal residences and farms not in trusts? § 15.13
- Does the drafter know the rules for drafting charitable lead trusts? § 15.14

§ 1.19 Analytical Checklist 1.15: Where to Find Analysis Regarding Generation-Skipping Transfer Taxation

Generation-Skipping Transfer Tax in General

- Does the drafter understand how the Tax Reform Act of 2012 impacts on the GST tax system? § 16.03
- Does the drafter understand the current federal generation-skipping transfer rules that are indispensable for planning and drafting generation-skipping transfer tax deduction provisions, including changes made by the Tax Act of 2012? §§ 16.04–16.11
- Does the drafter understand that the New York State generation-skipping transfer tax system has been repealed effective April 1, 2014? § 16.12
- Does the drafter understand the general planning and drafting considerations involving generation-skipping transfer taxation and how the Tax Act of 2012 impacts on planning and drafting? § 16.13

Planning and Drafting for Generation-Skipping Transfers Under Wills

- Has the will been planned and drafted to take into account direct skips, taxable terminations and taxable distributions, including the use of the testator's GST exemption? §§ 16.14–16.15
- Has the will been planned and drafted to take into account the special generation-skipping transfer tax rule for married persons? § 16.16
- Have various fiduciary provisions been considered to take into account the generation-skipping transfer tax system? § 16.17
- Have wills preserved or prolonged grandfather protection? § 16.17
- Have earlier wills been reviewed to determine if revision is necessary in light of the Tax Acts of 2001, 2010, and 2012 and whether a will contains obsolete provisions? § 16.17

Lifetime Planning To Take into Account Generation-Skipping Transfer Taxation

- Have lifetime actions been considered to take into account generation-skipping transfer taxation, including the use of the gift tax annual exclusion, the new GST exemption for 2013 and subsequent years and how transfers to a spouse may ensure optimal use of the GST exemption? § 16.18

§ 1.20 Analytical Checklist 1.16: Where to Find Analysis Regarding Various Types of Wills

Matters Included in a Will

- Does the drafter know what matters can be included in a will? § 17.02[1]

Duplicate Wills

- Has the testator been advised that (1) the courts do not regard the execution of duplicate wills as a wise practice, and (2) the execution of duplicate wills

requires the production of both copies for probate? § 17.02[2]

Forms for Complete Wills

- What kind of will is appropriate for an unmarried individual? § 17.03
- What kind of will is appropriate for a married individual with moderate wealth? § 17.04
- What kind of will is appropriate for a married individual to take into account the marital deduction? § 17.05
- Has the drafter considered the use of a pourover will? § 17.06

Codicils

- Has the effect of the republication of the prior will and any codicils thereto by execution of the codicil been considered? § 17.07
- Has the wisdom of executing a new will, instead of a codicil, been considered? § 17.07[2]
- If a codicil is to be revoked, is it intended to revoke the entire will or to restore the provisions affected by the codicil? § 17.07[4]

Contingent or Conditional Wills

- Is the will explicit that it is not to be effective, should the condition not occur? § 17.08

Joint Wills

- Have the reasons to avoid joint wills been considered? The use of joint wills has generated extensive litigation, and is not a recommended practice. § 17.09[1]
- If a joint will is executed pursuant to an agreement, has a written agreement been made to prevent revocation during the lifetime of both of the testators? § 17.09[1]
- Have the testators been advised that upon the death of either of them, the will usually becomes irrevocable as to the survivor? § 17.09[1]
- Is all or only some property of the testators subject to the testators' joint will provisions? The joint will and the accompanying written agreement should specify what property is intended to be covered. § 17.09[1]
- Has the right of the surviving testator to use or dispose of the property during the survivor's lifetime been provided for, and has the effect thereof on the estate tax marital deduction been considered? § 17.09[1]
- Has the estate tax marital deduction problem and its new solution been considered? It is now possible for a testator to create a testamentary trust or legal life estate for the benefit of the spouse, provide for the disposition of the remainder as the testator directs, and still obtain the estate tax marital deduction. Either approach seems preferable to use of a joint will with its attendant uncertainties. § 17.09[1]

- Have the testators been advised that should the survivor of them remarry, the new spouse would have a limited right of election? § 17.09[1]

(Text continued on page 1-33)

Living Wills

- Has the testator considered execution of a "Living Will," in which he requests that his life not be prolonged by mechanical or artificial life-support systems? Although New York does not have a statute recognizing the validity of such a document, it may be considered persuasive as to a person's intent to avoid extraordinary medical treatment. § 20.05
- Has the testator designated a health care proxy or surrogate decision maker? § 20.06

Mutual or Reciprocal Wills

- Have the testators been advised that there is no presumption that such wills are made pursuant to an agreement not to revoke? § 17.10
- Do the testators desire an agreement preventing revocation of the wills? The execution of such an agreement is recommended. § 17.10

Nondomiciliary Wills

- If the testator is a nondomiciliary, does he wish the will to be probated in a New York State Surrogate's Court? §§ 17.11[1], [2]
- Does the nondomiciliary testator also wish to provide that New York law shall govern the disposition of his property, and has he been advised whether he can reduce the surviving spouse's rights or the rights of other distributees under the law of his domicile? § 17.11[3]
- Do its provisions apply to property in only certain jurisdictions? Since so many foreigners now own assets located in the United States (for example, condominiums and bank accounts), they frequently desire a will which governs only the disposition of their United States property. § 17.11[4]

Nuncupative and Holographic Wills

- Does the drafter understand that nuncupative and holographic wills can only be used in exceptional circumstances? § 17.12

§ 1.21 Analytical Checklist 1.17: Where to Find Analysis Regarding Revocable Trusts

Revocable Trusts in General

- Is the drafter aware of new and important statutory changes affecting revocable trusts? §§ 18.01–18.02
- Does the drafter know the reasons for using revocable trusts? §§ 18.08–18.09
- Does the drafter know when a will might be preferable to a revocable trust? § 18.09[4], [5]
- Does the drafter know the federal and New York State tax consequences of revocable trusts? § 18.07

Creation of Revocable Trusts

- Does the drafter know the execution rules and all the other specific rules to

create a revocable trusts? § 18.03

- Does the drafter know that a revocable trust may provide rules governing trust amendment and revocation and that default rules apply otherwise? § 18.04
- Does the drafter know the rights of creditors of the trust creator, § 18.05, and the procedural rules governing revocable trusts? § 18.06

Drafting Considerations Relating to Revocable Trusts

- Does the drafter know the several considerations and decisions involving the drafting of revocable trusts? § 18.10
- Has the drafter coordinated the revocable trust with a back-up will? § 18.10[7]
- Which type of revocable trust is appropriate for the client? § 18.11
- Should a joint revocable trust be used? § 18.12

§ 1.22 Analytical Checklist 1.18: Where to Find Analysis Regarding Advance Directives for Property and Disposition of Testator's Remains

Durable Power of Attorney for Property in General

- Does the drafter understand the general nature of a durable power of attorney for property, including reasons for its use? § 19.02
- Does the drafter know New York's statutory authority for the short form, including reasons for various enactments? § 19.02
- Does the drafter know the form prescribed by statute for the short form? § 19.02[8]
- Does the drafter know that powers must be affirmatively selected by an initialing procedure? § 19.02[8]
- Does the drafter know what powers are specifically authorized under the statutory short form and that a subdivision may be refused? §§ 19.02[9], [10]
- Does the drafter know that the statutory powers may be modified, including eliminating a power, supplementing a power or adding an additional provision? § 19.02[10]

Statutory Gifts Rider

- Does the drafter know that a Statutory Gifts Rider must now be executed if the client wishes to grant the agent gift-making and other estate planning authority? § 19.02[13]

Revocation of Short Form Durable Power of Attorney for Property

- Does the drafter know about the revocation process? §§ 19.02[8][c], [22]

Advance Directive for Disposition of Testator's Remains

- Does the drafter know that a client may now execute an advance directive for the disposition of remains as well as make other provisions? § 19.03

- Which form or forms are appropriate for the client? § 19.03 Forms 1–5 in § 19.03[4][a]–[e]

§ 1.23 Analytical Checklist 1.19: Where to Find Analysis Regarding Advanced Written Directives for Health Care

Discussion about HIPAA Rules

- Does the drafter understand how the HIPPA rules might impact on estate planning documents? § 20.02

Advance Medical Directives

- Does the drafter understand the judicial developments in the advance medical directive area? § 20.03[1], [2]
- Is the drafter familiar with the Family Health Care Decisions Act of 2010 and
(Text continued on page 1-35)

how it allows surrogate-decision making? § 20.03[4] [b]

- Does the drafter appreciate the reasons to use advance written directives? § 20.03[5]

Palliative Care Legislation

- Does the drafter know about the important 2011 Palliative Care legislation, as amended in 2012? § 20.04

Do-Not-Resuscitate (DNR) Orders

- Does the drafter understand DNR orders, including statutory authority, drafting considerations, and revocation aspects? § 20.05 Specifically, is the drafter familiar with the MOLST form in § 20.05[7][b]? *See also Chapter 20, Appendix A* (setting forth hospital DNR statutes) and *Appendix B* (setting forth nonhospital DNR statutes).

Living Wills

- Does the drafter know the general aspects of living wills, § 20.06, drafting considerations, § 20.06[3], possible forms, § 20.06[4], and revocation aspects? § 20.06[5]

Health Care Proxy in General

- Does the drafter know the general aspects of the health care proxy? § 20.07[1] *See also Chapter 20, Appendix C* (setting forth health care proxy statutes).
- Does the drafter understand the standard form, § 20.07[3], and possible modifications? § 20.06[4]
- Has the drafter considered other health care proxies, including stand-alone forms, § 20.06[5], and combined advance directives? § 20.07[6]
- Has the drafter considered revocation aspects? § 20.07[7]

Patient Self-Determination Act

Does the drafter know about this law and its far-reaching significance? § 20.03[4][c]

§ 1.24 Analytical Checklist 1.20: Where to Find Analysis Regarding Retirement and Estate Planning

Major Tax Changes Made in 2002 Relating to Retirement Benefits

- The Economic Growth and Tax Relief Reconciliation Act of 2001 made numerous changes in the retirement benefits area. These changes are discussed throughout **Chapter 21**
- In 2002, final regulations on minimum required distributions (MRDs) were published. § 21.05 These regulations, applicable beginning in 2003, supplant proposed MRD rules that were issued in 1987 and 2002. Accordingly, the drafter should review existing beneficiary designation forms in light of the new rules that apply under the 2002 Final Treasury Regulations. § 21.07 In

addition, the impact of the Economic Growth and Tax Relief Reconciliation Act of 2001 should be taken into account.

Private Sector Retirement Benefits Plans

- Is the drafter familiar with the major qualified employer plans offered and their general income tax consequences, including changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001? § 21.02
- Is the drafter familiar with the different types of individual retirement accounts (IRAs) and their general income tax consequences, including changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001? § 21.03

Income Tax Rules for Distributions to Participants of Retirement Plans

- Is the drafter familiar with the distribution options and general income tax rules that apply to qualified employer plans and IRAs while the participant is alive, including the general application of the annuity rule for taxation, lump sum distributions, installment options, tax-free rollovers and the limitations on beneficiary designations under certain qualified employer plans if the participant is married? § 21.04
- Does the drafter know the new MRD rules for participants? § 21.05. **Appendix B** contains the new Uniform Lifetime Table that must be used by participants to determine annual MRDs unless the participant is married to a person 10 years younger than the participant.

Income Tax Rules for Distributions to Beneficiaries After Participant of Retirement Plan Dies

- Is the drafter familiar with the general income tax rules that apply to retirement plan distributions to the participant's beneficiaries, including the general application of the annuity rule for taxation and the specific application of the rules for income in respect of a decedent? § 21.06
- Does the drafter know the complex MRD rules, including the rules for distributions to:
 - Non-spouses? § 21.07[1]
 - Spouses? § 21.07[2]
 - Multiple Beneficiaries? § 21.07[3]
 - Trusts? § 21.07[4]
- Is the drafter aware that there is a expected rule multiple table, called the Single Life Table, that must be used to determine MRDs after the participant dies? § 21.07. This table is set forth in **Appendix A**

Transfer Tax Rules Relating to Retirement Benefits

- Does the drafter know the transfer tax rules that apply to retirement benefits, including those under the estate, gift, and estate and GST-tax systems? § 21.08

Drafting for Retirement Benefits

- Does the drafter have a working knowledge of the tax and non-tax rules that apply to private benefit plans so that informed decisions can be made by the participant? §§ 21.02–21.08
- Has the drafter taken into account how a participant's retirement benefits fit into the participant's overall estate profile? § 21.09[2]
- Does the drafter understand the necessity to review beneficiary designation options under the participant's plan, and when a spousal waiver may be necessary? § 21.09[2] and [3]
- Has the drafter considered the effect of federal transfer taxes, including the increased exemption levels and rate reductions under the Economic Growth and Tax Relief Reconciliation Act of 2001? § 21.09[4] If taxes will be payable, has the participant considered who will bear the tax burden on retirement benefits and various forms that might be used? § 21.09[4][b]
- Does the drafter understand the decisions involved in making beneficiary designations for non-spouse beneficiaries and sample forms that might be considered? § 21.10
- Does the drafter know the complex trust rules that are discussed in § 21.07[4], and how to draft beneficiary designations to comply with these rules? § 21.11[1]
- Is the drafter aware of many trust drafting considerations for retirement plans? § 21.11[2]
- Does the drafter understand the decisions involved in making beneficiary designations in favor of a spouse and the sample forms that might be considered? § 21.12
- Does the drafter understand the decisions involved in making beneficiary designations in favor of a charitable organization and the sample forms that might be considered? § 21.13

§ 1.25 Analytical Checklist 1.25: Where to Find Analysis Regarding Public Sector Benefits Under Social Security

- The chapter generally discusses retirement and survivor's benefits under Social Security. Chapter 22.
- What benefits are available to employees, self-employed individuals and their families? § 22.02
- How will the Social Security Administration treat claims in *Windsor* same sex marriages? § 22.02[3]
- What is the amount of the Social Security benefit in various situations? § 22.03
- Who is covered by Social Security? § 22.04
- What is the process for applying for Social Security benefits? § 22.05

- What are the federal income tax consequences of receiving Social Security benefits? § 22.06

§ 1.26 Index of Analytical Checklists

Set forth below an index of the Analytical Checklists found in Sections 1.05 through 1.24 which will enable the reader to readily find the relevant subject:

	<u>Section</u>
Abatement of specific dispositions	1.08
Accrued income, apportionment	1.16
Accumulation of income	1.11
Adeemed dispositions	1.08
Adopted children	1.09
Affidavit of attesting witnesses	1.06
After-born children	1.09
Annuity	1.11, 1.18
Application of income or principal	1.16
Appointees	1.12
Appointment of executor or trustee or co-executor or co-trustee by person other than executor	1.14
Apportionment, principal and income	1.16
Assignment of income	1.11
Assignment of principal	1.11
Attestation clause	1.06
Attesting witness	1.06
Attorney	1.09
Automobile	1.08
Bank account	1.08
Beneficiary under the will of another	1.09
Bond of fiduciary	1.14
Broker-dealers	1.15
Brother	1.09
Burial instructions	1.07, 1.22
Burial lots	1.08
Business	1.08
Capacity of testator	1.06
Charitable lead trusts	1.18
Charitable remainder trusts	1.18
Charitable organization	1.18
Charge on property	1.08
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