# PROBATE AND ADMINISTRATION OF NEW YORK ESTATES

# SECOND EDITION

EDITOR-IN-CHIEF GARY R. MUND, ESQ.

2022 Revision

New York State Bar Association publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207.

Copyright 2022
New York State Bar Association
All rights reserved
ISBN: 978-157969-238-4
Book Product Number: 4005422
Supp. Product Number: 500522

SKU: 4104005002201

### TABLE OF CONTENTS

**Chapter 1** Preparing for Estate Administration *Paul S. Forster, Esq.* 

**Chapter 2** Jurisdiction of the Surrogate's Court *Ian W. MacLean, Esq.* 

**Chapter 3** Administration Proceedings *Gary R. Mund, Esq.* 

**Chapter 4** Probate Proceedings *Gary R. Mund, Esq.* 

**Chapter 5** Settlement of Small Estates *Richard M. Storto, Esg.* 

Chapter 6 Right of Election
Shifra Herzberg, Esq.
Daniella Wittenberg, Esq.

Chapter 7 Miscellaneous Matters Affecting Validity of Wills and Distribution of Assets

Marceline B. Tempesta, Esq.

Arlene Harris, Esq.

Chapter 8 Administering the Estate

Lucy M. Berkman, Esq.

Benjamin S. Cranston, Esq.

Sharon L. Wick, Esq.

Chapter 9 Federal Estate Taxation
Robert S. Reynolds, Esq.
Professor William P. LaPiana

Chapter 10 New York State Estate Tax
Robert S. Reynolds, Esq.
Professor William P. LaPiana

Chapter 11 Fiduciary Income Tax Planning *Michael E. O'Connor, Esq.* 

**Chapter 12** Fiduciary Accounting *Ian W. MacLean, Esq.* 

**Chapter 13** Settling the Account *Paul S. Forster, Esq.* 

# **DETAILED TABLE OF CONTENTS**

Foreword		XXXV
Chapter 1	Preparing for Estate Administration  Paul S. Forster, Esq.	
[1 0] [	-	1 2
[1.0] I. [1.1]		1-3 1-3
		1-3 1-3
[1.2]	$\mathcal{E}$	
[1.3]	2,	1-4
[1.4] II.	1 6	1-5
[1.5]	•	1-5
[1.6]	, , , , , , , , , , , , , , , , , , ,	1-7
[1.7]	$\varepsilon$	1-8
[1.8]		1-8
[1.9]	$\mathcal{E}$	1-9
[1.10]	$\epsilon$	1-10
[1.11]		1-10
[1.12]		1-11
[1.13]	1 2	1-12
[1.14]		1-14
[1.15]		1-15
[1.16]		1-15
[1.17]		1-15
[1.18]	2. Dealing with Totten Trusts, Joint Accounts,	
	Insurance Policies and Exempt Property:	
	<b>3</b>	1-16
[1.19]		1-17
[1.20]		1-17
[1.21]		1-19
[1.22]	3 1 1 3	1-19
[1.23]	$\mathcal{E}$	1-20
[1.24]		1-20
[1.25]		1-20
[1.26]	$\epsilon$	1-21
[1.27]		1-21
[1.28]	ę	1-22
[1.29]	•	1-22
[1.30]	4. Proceeding to Compel Production of the	
	Will	1-23
[1.31]	5. Ex Parte Order to Open Decedent's	
	Safe-Deposit Box	1-23

[1.32]		6. Care of the Will	1-25
[1.33]		G. Advising the Fiduciary and Beneficiaries of	
		Problems	1-25
[1.34]		H. Safeguarding Assets Prior to Issuance of	
		Letters	1-26
Chapt	er 2	Jurisdiction of the Surrogate's Court	
		Ian W. MacLean, Esq.	
[2.0]	I.	Introduction	2-3
[2.1]	II.	Overview of The Surrogate's Court	2-3
[2.2]		A. Origin and Development	2-3
[2.3]		B. Principal Implementing Statutes	2-5
[2.4]	III.	Subject-Matter Jurisdiction	2-6
[2.5]		A. Exercise of Subject-Matter Jurisdiction	2-6
[2.6]		1. General Considerations	2-6
[2.7]		2. General Jurisdiction of the Surrogate's	
		Court	2-6
[2.8]		3. Proceedings Enumerated in SCPA Are Not	
		Exclusive	2-8
[2.9]		4. Examples of the Exercise of Subject-Matter	
		Jurisdiction	
[2.10]		B. Asserting Subject-Matter Jurisdiction	2-12
[2.11]		1. Jurisdiction of Parties and Matter;	
		Jurisdictional Facts	2-12
[2.12]		2. Domicile	2-12
[2.13]		3. Applying the Statutes	2-14
[2.14]		a. Exclusive Jurisdiction of the Surrogate's	
		Court	2-14
[2.15]		b. Non-Exclusive Jurisdiction	2-15
[2.16]		c. How Jurisdiction Is Asserted	
[2.17]	IV.		2-17
[2.18]	V.	Miscellaneous Matters Affecting Jurisdiction	2-19
[2.19]	VI.	In Personam Jurisdiction	2-20
[2.20]		A. General Considerations	2-20
[2.21]		B. Necessary Parties to a Proceeding	2-21
[2.22]		1. Generally	
[2.23]		2. Other Parties to a Proceeding	2-23
[2.24]		a. Attorney General	
[2.25]		b. Guardian Ad Litem	2-24
[2.26]		c. Designee for a Person Under a	
		Disability	
[2.27]		d. Public Administrator	2-27

[2.28]	,	C.	Vir	tual Representation	2-27
[2.29]			1.	Generally	2-27
[2.30]			2.	Interests That Can Be Virtually	
				Represented	2-29
[2.31]				a. Class Interests	2-29
[2.32]				b. Contingent Interests	2-30
[2.33]			3.	Constitutionality and Binding Effect	2-30
[2.34]			4.	Special Rule Regarding Nonjudicial	
				Settlement of Accounts	2-31
[2.35]			5.	Conclusion	2-31
[2.36]		D.	Obt	aining In Personam Jurisdiction Over	
				cessary Parties	2-31
[2.37]			1.	•	2-32
[2.38]				a. Waiver of Issuance and Service of	
				Process	2-32
[2.39]				b. Appearance in Person	2-33
[2.40]				c. Appearance by Attorney	2-33
[2.41]				d. Appearance by Pleading	2-34
[2.42]				e. Appearance on Behalf of Persons Under a	
				Disability	2-34
[2.43]				f. Appearance on Behalf of an Alien	2-35
[2.44]			2.	Service of Process	2-35
[2.45]				a. Nature of Process	2-35
[2.46]				b. Methods of Service	2-36
[2.47]				(1) Personal Delivery	2-36
[2.48]				(2) Service by Registered or Certified Mail	•,
				Return Receipt Requested, or by	
				Special Mail Service, Upon Non-	
				Domiciliaries	2-38
[2.49]				(3) Service Pursuant to Court Order	2-39
[2.50]					2-40
[2.51]			3.	When Process Is Returnable	2-42
[2.52]			4.	Who May Serve Process?	2-42
[2.53]			5.	Proof of Service	2-43
	_				
Chapter				stration Proceedings	
		Ga	ry R	. Mund, Esq.	
[3.0]	<b>I</b>	Intı	odu	ction	3-3
[3.1]	Π	Ad	mini	stration Proceedings	3-3
[3.2]		A.	Pur	pose	3-3
[3.3]		B.	Nec	cessary Parties	3-5
[3.4]			1.	General Considerations	3-5

[3.5]		2. Statutory Priority	3-5
[3.6]		3. Examples of Priority	
[3.7]		4. "Absentees" (Missing Persons Possibly	
		Deceased)	3-7
[3.8]		5. Unknown Distributees	
[3.9]		6. Acquiring Personal Jurisdiction	3-7
[3.10]	C.	Completing the Forms	
[3.11]		1. General Considerations	3-8
[3.12]		2. Step-by-Step Analysis of the Forms	3-8
[3.13]		a. Administration Petition (Form A-1)	3-8
[3.14]		b. Waiver of Citation, Renunciation and	
		Consent to Appointment of Administrator	
		(Forms A-8 and A-9)	3-19
[3.15]		c. Administration Citation (Form A-2)	3-20
[3.16]		d. Notice of Application for Letters of	
		Administration (Form A-3)	3-21
[3.17]		e. Notice to Consul General (Form A-5)	3-21
[3.18]		f. Affidavit of Regularity (Form A-7)	3-22
[3.19]		g. Family Tree (Form FT-1)	3-22
[3.20]		h. Decree Appointing Administrator	
		(Form A-6)	
[3.21]	D.	Commencing the Proceeding	
[3.22]		1. Filing the Petition	
[3.23]		2. Kinship Hearing	
[3.24]	E.		
[3.25]		1. General Considerations	
[3.26]		2. Effect of Failure to Appear	
[3.27]		3. Contested Administration	
[3.28]	F.		
[3.29]	G.		
[3.30] III.		ecial Situations	
[3.31]		Limited or Restricted Administration	
[3.32]		Administration in Lieu of Probate	
[3.33]	C.	Temporary Administration	
[3.34]		1. General Considerations	3-28
[3.35]		2. Obtaining Appointment	
[3.36]	_	Administration d.b.n. (de bonis non)	
[3.37]	E.	Ancillary Administration	3-29
Appendix A		Form A-1—Petition for Letters of	
		Administration	3-31
Appendix B		Form A-2—Administration Citation	3-43
Appendix C		Form A-3—Notice of Application for Letters of	
		Administration	3-45

Appendix D	Form A-4—Affidavit of Mailing Notice of	
• •	Application for Letters of Administration	3-49
Appendix E	Form A-5—Notice to Consul General	3-51
Appendix F	Form A-6—Decree Appointing Administrator	3-53
Appendix G	Form A-7—Affidavit of Regularity	3-55
Appendix H	Form A-8—Waiver of Citation, Renunciation and	
	Consent to Appointment of Administrator	
	(Individual)	3-59
Appendix I	Form A-9—Waiver of Citation and Consent to	
	Appointment of Administrator (Corporation)	3-61
Appendix J	Form A-10—Affidavit of Service of Citation	3-63
Appendix K	Form FT-1—Family Tree	3-65
Appendix L	Affidavit of Service of Citation by Registered	
	Mail or Certified Mail	3-67
Appendix M	Form ABN-DBN-1—Petition for Letters of	
	Administration d.b.n	3-69
Appendix N	Form ABN-DBN-2—Administration d.b.n.	
	Citation	3-75
Appendix O	Form ABN-DBN-3—Waiver of Citation,	
	Renunciation and Consent to Administrator d.b.n.	
	(Individual)	3-77
Appendix P	Form ABN-DBN-4—Consent to Appointment of	
	Administrator d.b.n. (Corporation)	3-79
Appendix Q	Form ABN-DBN-5—Notice of Application for	
	Letters of Administrator d.b.n.	3-81
Appendix R	Form ABN-DBN-6—Affidavit of Mailing Notice	
	of App. for Letters of Admin. d.b.n	3-85
Appendix S	Form ABN-DBN-7—Notice to the Consul	
	General	3-87
Appendix T	Form ABN-DBN-8—Affidavit of Service of	
	Citation (Adult)	3-89
Appendix U	Form AA-1—Petition for Ancillary Letters of	
	Administration	3-91
Appendix V	Form AA-2—Ancillary Administration Citation	3-99
Appendix W		
	Letters of Administration	3-101
Chapter 4	Probate Proceedings	
Спарил 4	Gary R. Mund, Esq.	
[4 O] T		4.2
[4.0] I.	Introduction	4-3
[4.1] II.	Probate Proceedings	
[4.2]	A. Purpose	4-3

[4.3]	В.	Sub	ojec	t Matter Jurisdiction	4-4
[4.4]	C.	Neo	cess	ary Parties	4-5
[4.5]		1.	Ge	eneral Considerations	4-5
[4.6]		2.	De	etermining the Parties	4-5
[4.7]			a.	Distributees	4-7
[4.8]			b.	Each Person Designated in the Will as	
				Primary Executor	4-7
[4.9]			c.	Persons Adversely Affected by a	
				Codicil	4-8
[4.10]			d.	Persons Having an Interest Under Any	
				Other Will on File in the Same Surrogate's	S
				Court Who Are Adversely Affected by the	
				Later Will	4-9
[4.11]			e.	Persons Adversely Affected by the	
. ,				Purported Exercise of a Power of	
				Appointment	4-10
[4.12]			f.	The Testator Where the Petition Alleges	
				That the Testator Is Believed Dead	4-11
[4.13]			g.	The State Tax Commission in the Case of	
[]			٥.	a Nondomiciliary Testator	4-11
[4.14]			h.	The Public Administrator Where There Ar	
[]				Unknown (or No Known) Distributees, or	
				All Known Distributees Are First Cousins	
				or More Remotely Related	4-12
[4.15]			i.	The Attorney General Where There Are	. 12
[4.13]			1.	No Known Distributees	4-12
[4.16]	D	Cor	mnl	eting the Forms	
[4.17]	<b>D</b> .	1.	_	eneral Considerations	
[4.18]		2.		ep-by-Step Analysis of the Forms	4-13
[4.19]		۷.		Probate Petition (Form P-1)	4-13
[4.17]				Affidavit of Comparison (Form P-13)	4-20
[4.21]				Waiver of Process; Consent to Probate	4-20
[4.21]			C.	(Form P-4)	1 21
[4.22]			d	Renunciation by Executor and/or Trustee	4-21
[4.22]			u.		4-21
[4 22]			0	(Form P-10) Probate Citation (Form P-5)	
[4.23]			e. f.	Affidavit of Service of Citation	4-22
[4.24]			1.		4 22
[4 25]			~	(Form P-7)	4-22
[4.25]			g.		4 22
[4 26]			L	(Form P-6)	
[4.26]			h.	•	
				Pursuant to SCPA 1406 (Form P-3)	4-23

[4.27]			i. I	Decree Granting Probate	4-24
[4.28]	E.	Coı		ncing the Probate Proceeding	4-24
[4.29]		1.	Filin	g the Petition	4-24
[4.30]		2.	Othe	er Accompanying Documentation	4-25
[4.31]		3.	Prov	ring the Will	4-26
[4.32]			a. (	General Considerations	4-26
[4.33]				Witness Depositions or "1406	
				Affidavits"	4-26
[4.34]			c. I	Dispensing with Testimony of	
				Witnesses	4-27
[4.35]				Miscellaneous Provisions	4-28
[4.36]			(	1) Subpoena Power	4-28
[4.37]			(	2) The Court to Be Satisfied	4-28
[4.38]	F.	Pro		ngs on the Return Date	4-29
[4.39]		1.	Gen	eral Considerations	4-29
[4.40]		2.	Unc	ontested Proceedings	4-30
[4.41]		3.	Con	tested Proceedings	4-30
[4.42]			a. (	General Considerations	4-30
[4.43]				Pre-Objection Examinations	4-31
[4.44]			c. (	Continuing with the Contest	4-32
[4.45]	G.	The	Prob	pate Decree	4-33
[4.46]	H.	Qua	alifyii	ng the Fiduciary	4-34
[4.47]		1.	Elig	ibility	4-34
[4.48]		2.	Qua	lification	4-35
[4.49]			a. (	Oath or Consent	4-36
[4.50]			b. I	Designation	4-36
[4.51]			c. I	Bond	4-37
[4.52]			d. I	Designation and Charter	4-38
[4.53] III.	Spe	ecial	Situa	ations	4-38
[4.54]	A.	Put	nam/.	Satterlee/Weinstock Inquiries	4-38
[4.55]	B.	Pre	limin	ary Letters Testamentary	4-39
[4.56]		1.	Gen	eral Considerations	4-39
[4.57]		2.	Proc	edure to Obtain Letters	4-40
[4.58]	C.	Adı	minis	tration c.t.a. (cum testamento annexo):	
		Adı	minis	tration With the Will Annexed	4-41
[4.59]	D.	And	cillary	y Probate	4-42
[4.60]	E.	Los	st Wil	l Proceedings	4-43
Appendix A		For	m P-	1—Petition for Probate	4-45
Appendix B		For	m P-2	2—Application for Preliminary Letters	
				ıy	4-59
Appendix C		For	m P-3	3—Affidavit of Attesting Witness	4-65
Appendix D		For	m P-4	4—Waiver of Process	4-67

Appen	dix E	Form P-5—Probate Citation	4-69
Appen	dix F	Form P-6—Notice of Probate	4-71
Appen	dix G	Form P-7—Affidavit of Service of Citation	4-75
Appen	dix H	Form P-8—Application to Dispense With	
		Testimony of Attesting Witness	4-77
Appen	dix I	Form P-9—Affidavit Proving Handwriting	4-79
Appen	dix J	Form P-10—Renunciation of Nominated	
		Executor and/or Trustee	4-81
Appen	dix K	Form P-11—Renunciation of Letters of	
		Administration and Waiver of Process	4-83
Appen	dix L	Form P-12—Affidavit of No Debt	4-85
Appen	dix M	Form P-13—Affidavit of Comparison	4-87
Appen	dix N	Form CTA-1—Petition for Letters of	
		Administration c.t.a. After Probate	4-89
Appen	dix O	Form CTA-2—Letters of Administration c.t.a.	
		Citation	4-95
Appen	dix P	Form CTA-3—Renunciation, Waiver and Consent	į
		to Administration c.t.a.	
Appen		Form AP-1—Petition for Ancillary Probate	
Appen		Form AP-2—Ancillary Probate Citation	
Appen	dix S	Form AP-3—Notice of Ancillary Probate	4-109
<b>C</b> I 4	<b>-</b>	Cattle manual of Consell Estates	
Chapt	er 5	Settlement of Small Estates	
o-	_	Richard M. Storto, Esq.	
[5.0]	I.	Introduction	
[5.1]	II.	Overview of Article 13 Procedure	
[5.2]		A. Purpose	5-4
[5.3]		B. Legislative History	5-5
[5.4]		C. Basic Mechanics	5-7
[5.5]		D. Property Exempted from Determination of Gross	
		Value of Estate	
[5.6]		1. Self-Administering Property	5-8
[5.7]		2. Exempt Property Where Spouse or Minor	
		Children Survive	
[5.8]		* *	5-10
[5.9]		E. Valuation	
[5.10]	III.		5-12
		Selection of the Voluntary Administrator	
[5.11]		A. General Requirements	5-12
[5.12]		A. General Requirements B. Intestate Small Estate	5-12 5-12
[5.12] [5.13]		A. General Requirements  B. Intestate Small Estate  C. Testate Small Estate	5-12 5-12 5-14
[5.12]	IV.	A. General Requirements B. Intestate Small Estate	5-12 5-12

[5.16]		B. Required Renunciations	5-15
[5.17]		1. Intestate Estates	5-15
[5.18]		2. Testate Estates	5-15
[5.19]		C. Documents to Be Filed	5-16
[5.20]		D. Bond Not Required	5-16
[5.21]		E. Court Action	5-16
[5.22]		F. Certificate	5-17
[5.23]		G. Jurisdiction Obtained	5-18
[5.24]	V.	Obtaining Assets	5-18
[5.25]	VI.	Powers of the Voluntary Administrator	5-19
[5.26]		A. Power to Take Possession of Decedent's	
		Property	5-19
[5.27]		B. Power to Sell Decedent's Property	5-19
[5.28]		C. Limited Power to Litigate	5-19
[5.29]		D. Extent and Duration of Fiduciary Powers	5-20
[5.30]	VII.	Duties of the Voluntary Administrator	5-20
[5.31]		A. Generally	5-20
[5.32]		B. Opening and Maintaining Estate Bank Account	5-21
[5.33]		C. Payment of Administration Expenses, Funeral	
		Bill and Debts	5-21
[5.34]		D. Distribution of Fund	5-22
[5.35]		E. Filing the Account	5-23
[5.36]	VIII.	Liabilities of the Voluntary Administrator	5-23
[5.37]	IX.	Payment, Without Administration, of Debt Owing	
		to the Estate	
[5.38]		A. Generally	
[5.39]		B. Definitions	
[5.40]		C. Order of Payments	
[5.41]		1. Immediate Payment to Surviving Spouse	5-25
[5.42]		2. Payments After 30 Days	
[5.43]		3. Payments after Six Months	
[5.44]		D. Discharge of Debtor upon Good Faith Payment	
[5.45]		E. Accountability of Recipient	
[5.46]		F. Rights of Debtors	
[5.47]	X.	Payment, Without Administration, of Social Security	ty
		and Unemployment Insurance Owing to the Estate.	5-28
Append	lix A	Form SE-1A—Affidavit in Relation to Settleme	ent
		of Estates (Before August 29, 1996)	5-31
Append	lix B	Form SE-1B—Amended Affidavit in Relation t	О
		Settlement of Estates (Before August 29, 1996)	5-35
Append	lix C	Form SE-2A—Affidavit in Relation to Settleme	ent
		of Estates (Before January 1, 2009)	5-39

Appendix D	Form SE-2B—Amended Affidavit in Relation to	
	Settlement of Estates (Before January 1, 2009)	5-43
Appendix E	Form SE-3A—Affidavit in Relation to Settlement	
	of Estates (After January 1, 2009)	5-45
Appendix F	Form SE-3B—Amended Affidavit in Relation to	
	Settlement of Estates (After January 1, 2009)	5-51
Appendix G	Form SE-1C—Renunciation of Voluntary	
	Administration	5-53
Appendix H	Form SE-1D—Report and Account in Settlement	
	of Estate	5-55
Appendix I	Form FT-1—Family Tree	5-57
Chapter 6	Right of Election	
	Shifra Herzberg, Esq.	
	Daniella Wittenberg, Esq.	
[6.0] I.	Introduction	6-3
[6.1] II.		6-3
[6.2]		6-3
[6.3]	B. Net Estate	6-4
[6.4]	1. Generally	6-4
[6.5]	2. Location of Decedent's Assets; Inclusion of	
	Foreign Realty	6-4
[6.6]	3. Estate Taxes	6-4
[6.7]	4. Debts and Administration Expenses	6-5
[6.8]	C. Testamentary Substitutes	6-6
[6.9]	1. Generally	6-6
[6.10]	2. Testamentary Substitutes	6-6
[6.11]	a. Gratuitous Transfers and Gifts Causa	
	Mortis	6-6
[6.12]	b. Trusts, Disposition of Property and	
	ĕ	6-7
[6.13]	• • • • • • • • • • • • • • • • • • • •	6-7
[6.14]	· /	6-9
[6.15]	•	6-10
[6.16]	(4) Transfers to Minors	6-10
[6.17]	c. Property Payable Under a Thrift, Savings,	
	Retirement, Pension, Deferred Compensation	
	Death Benefit, Stock Bonus or Profit-Sharin	ng
	Plan, Account, Arrangement, System or	
	Trust	
[6.18]	d. Property Subject to a Presently Exercisable	
	General Power of Appointment	6-11

[6.19]		e. Securities Held in Transfer-On-Death	
		Form	6-12
[6.20]		f. Totten Trust Bank Savings	
		Accounts	6-12
[6.21]		g. Joint Bank Accounts	6-13
[6.22]		h. Property Held in Joint Tenancy With	
		Right of Survivorship or Tenants by the	
		Entirety	6-13
[6.23]		i. Surviving Spouse's Burden of Proof	6-14
[6.24]		j. Creditors' Rights	6-15
[6.25]		k. Third Party Transfers Excluded	6-15
[6.26]		D. Determining the Elective Share	6-15
[6.27]		1. Net Elective Share	6-15
[6.28]		2. Apportioning the Net Elective Share	6-18
[6.29]	III.	Federally Conferred Spousal Rights to Pension	
		Plans	6-19
[6.30]	IV.	Exercise and Waiver of the Election Right	6-21
[6.31]		A. Time for Election	6-21
[6.32]		B. How Election Is Exercised	6-23
[6.33]		C. Revocation of Election	6-24
[6.34]		D. Who May Exercise the Right	6-25
[6.35]		1. Spouse or Authorized Agent	6-25
[6.36]		2. Guardian, Guardian Ad Litem, Committee	
		or Conservator	6-26
[6.37]		3. Spouse of Nondomiciliary Decedent	6-27
[6.38]		4. Common Law Marriage	6-27
[6.39]		5. Same-Sex Marriage	6-27
[6.40]		E. Proceedings to Determine Validity or Effect of	
		Election	6-28
[6.41]	V.	Waiver of the Right of Election	6-29
[6.42]		A. General Rule	6-29
[6.43]		B. Mechanics of Waiver	6-29
[6.44]		1. Requirements	6-29
[6.45]		2. Waiver by Marital Agreement	6-30
[6.46]		3. Waiver by Separation Agreement	6-34
[6.47]		C. Conflicts of Interest and Ethical	
		Considerations: When Is There a Need for	
		Independent Counsel?	6-34
[6.48]		D. Waiver Issues With Respect to Certain	
		Charitable Remainder Trusts	6-36
[6.49]	VI.	1 & 1	6-37
[6.50]		A. General Considerations	6-37

[6.51]	В.	Divorce, Annulment or Dissolution Under Decree	c 20					
[6,52]	$\mathbf{C}$	Valid in New York State	6-38					
[6.52]	C.	Divorce, Annulment or Dissolution Under Decree	c 20					
[6 52]	Ъ	Not Valid in New York State	6-39					
[6.53]	_	Void Marriages	6-40					
[6.54]	E.	8	c 41					
[6 55]	Б	Spouse	6-41					
[6.55]	F.	*						
[6.56]	G.	Failure to Support	6-43					
Appendix A		Petition on Application to Determine Validity	c 15					
4 1' D		and Effect of Election	6-45					
Appendix B		Answer to Petition and Counterclaim						
Appendix C		Reply and Answer to Counterclaim	6-53					
Appendix D		Mutual Waiver Clause in Prenuptial						
		Agreement	6-55					
Appendix E		Historical Overview: Right of Election for						
		Decedents Dying Before September 1, 1992	6-57					
Chapter 7	Mi	scellaneous Matters Affecting Validity of Wills and	ı					
Chapter 7		Distribution of Assets						
		arceline B. Tempesta, Esq.						
		lene Harris, Esq.						
[7.0] I		-	7.0					
[7.0] I.		Ill Revocation	7-3					
[7.1]		Marriage After Will Execution	7-3					
[7.2]		Revocation by Termination of Marriage	7-3					
[7.3]	C.	Formal Revocation	7-5					
[7.4]		1. Subsequent Will or Other Writing	7-5					
[7.5]		a. Subsequent Will	7-5					
[7.6]		b. Subsequent Writing	7-7					
[7.7]		2. Revocation by Physical Act	7-7					
[7.8]		3. Lost Wills	7-9					
[7.9]		Revocation by Inconsistent Act	7-11					
[7.10] II.		J 1	7-14					
[7.11]		General Considerations	7-14					
[7.12]		Application of the Statute	7-16					
[7.13]	C.	Relation of Family Exemption to Election						
		Right	7-17					
[7.14]	D.	Family Exemption and Testamentary Benefits	7-17					
[7.15]	E.	J 1 &	7-18					
[7.16]		1. Waiver by Acceptance of Testamentary						
		Gifts	7-18					
[7.17]		2. Waiver by Marital Agreement	7-18					

[7.18]		3. Waiver by Separation Agreement	7-19
[7.19]		F. Creditor's Rights in Exempt Property	7-20
[7.20]		G. Proceedings to Obtain Exempt Property	7-20
[7.21]	III.	Renunciation and Disclaimers	7-21
[7.22]		A. General Considerations	7-21
[7.23]		B. Application of the Statute	7-21
[7.24]		1. Dispositions That May Be Renounced	7-21
[7.25]		* *	7-23
[7.26]		3. Procedure	7-25
[7.27]			7-27
[7.28]		a. General Considerations	7-27
[7.29]		b. Renunciation of Absolute Interests 7	7-27
[7.30]		c. Renunciation of Life Estates or Future	
			7-28
[7.31]		j j	7-29
[7.32]		C. Qualified Disclaimers Under the Internal Revenue	
			7-32
[7.33]	IV.		7-34
[7.34]		· · · · · · · · · · · · · · · · · · ·	7-34
[7.35]		B. Effect on Right of Election	7-36
Chante	or <b>Q</b>	Administering the Estate	
Chapte	er 8	Administering the Estate	
Chapte	er 8	Lucy M. Berkman, Esq.	
Chapto	er 8	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq.	
-		Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq.	0.2
[8.0]	I.	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq. Introduction	8-3
[8.0] [8.1]		Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq. Introduction	8-3
[8.0] [8.1] [8.2]	I.	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq. Introduction	8-3 8-3
[8.0] [8.1] [8.2] [8.3]	I.	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq. Introduction	8-3
[8.0] [8.1] [8.2]	I.	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq. Introduction	8-3 8-3 8-4
[8.0] [8.1] [8.2] [8.3] [8.4]	I.	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq. Introduction	8-3 8-3
[8.0] [8.1] [8.2] [8.3]	I.	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq. Introduction	8-3 8-3 8-4 8-4
[8.0] [8.1] [8.2] [8.3] [8.4] [8.5]	I.	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq.  Introduction	8-3 8-3 8-4 8-4
[8.0] [8.1] [8.2] [8.3] [8.4] [8.5]	I.	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq. Introduction	8-3 8-3 8-4 8-4
[8.0] [8.1] [8.2] [8.3] [8.4] [8.5]	I.	Lucy M. Berkman, Esq.  Benjamin S. Cranston, Esq. Sharon L. Wick, Esq.  Introduction	8-3 8-3 8-4 8-4 8-5 8-5
[8.0] [8.1] [8.2] [8.3] [8.4] [8.5] [8.6] [8.7]	I.	Lucy M. Berkman, Esq.  Benjamin S. Cranston, Esq. Sharon L. Wick, Esq.  Introduction	8-3 8-3 8-4 8-4 8-5 8-5
[8.0] [8.1] [8.2] [8.3] [8.4] [8.5] [8.6] [8.7]	I.	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq.  Introduction	8-3 8-3 8-4 8-4 8-5 8-5 8-5
[8.0] [8.1] [8.2] [8.3] [8.4] [8.5] [8.6] [8.7] [8.8] [8.9]	I.	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq.  Introduction	8-3 8-3 8-4 8-4 8-5 8-5
[8.0] [8.1] [8.2] [8.3] [8.4] [8.5] [8.6] [8.7]	I.	Lucy M. Berkman, Esq.  Benjamin S. Cranston, Esq. Sharon L. Wick, Esq.  Introduction	8-3 8-3 8-4 8-4 8-5 8-5 8-6 8-6
[8.0] [8.1] [8.2] [8.3] [8.4] [8.5] [8.6] [8.7] [8.8] [8.9]	I.	Lucy M. Berkman, Esq. Benjamin S. Cranston, Esq. Sharon L. Wick, Esq. Introduction	8-3 8-3 8-4 8-4 8-5 8-5 8-5

[8.12]		B. Reviewing the Will and Other Dispositive	
		Documents	8-8
[8.13]		1. Understanding the Dispositive Scheme	8-8
[8.14]		2. Problem Areas, Including Construction	
		Questions	8-8
[8.15]		3. Nonprobate Assets	8-10
[8.16]		4. Revocable or "Living" Trusts	8-11
[8.17]		C. Recognizing the Beneficiaries' Needs and	
		Desires	8-13
[8.18]		1. General Considerations	8-13
[8.19]		2. Distributions in Advance of Seven Months	
		from the Date of Issuance of Letters	8-14
[8.20]		a. SCPA 2102	8-14
[8.21]		b. Dealing with Nonprobate Assets	8-14
[8.22]		D. Working with the Fiduciary	8-15
[8.23]	III.	Taking Control	8-16
[8.24]		A. Safeguarding Assets: Fiduciary's Power Prior to	
		Probate	8-16
[8.25]		B. Marshaling and Valuing Assets	8-17
[8.26]		1. General Considerations	8-17
[8.27]		2. Methodology for Collecting Various	
		Assets	
[8.28]		a. Registered Certificated Securities	8-18
[8.29]		b. Deposit or Investment Accounts	
[8.30]		c. Real Property	
[8.31]		d. Life Insurance Proceeds	
[8.32]		e. Retirement Accounts	8-20
[8.33]		f. U.S. Savings Bonds (Series E, EE	
		or H)	
[8.34]		g. Motor Vehicle	
[8.35]		h. Tangible Personal Property	
[8.36]		i. Digital Assets	
[8.37]		j. Other Assets	8-25
[8.38]	IV.	Making a Plan for Administration and Settlement of	
		the Estate	8-27
[8.39]		A. Determining and Raising Cash Requirements	
[8.40]		1. Use of "Preliminary Analysis" Form	8-27
[8.41]		a. Preliminary Estimates of Values and	_
		Deductions	
[8.42]		b. Sources of Cash; Investments	
[8.43]		c. Sources of Cash; Contribution	
[8.44]		d. Frequent Review Required	8-33

[8.45]			2.	Keeping the Preliminary Analysis Form	
				Current	8-33
[8.46]		B.	Ma	king Estate Property Productive	8-34
[8.47]			1.	Duty to Produce Income on Estate Assets	
				Prior to Distribution	8-34
[8.48]			2.	Disposition of Income Earned During	
				Administration	8-36
[8.49]				a. Right to Income	8-36
[8.50]				b. Charging Expenses to Income or	
				Principal	8-37
[8.51]		C.	Rei	nvesting Estate Assets	8-37
[8.52]			1.	Investment Responsibilities and Rights of	
				Executor or Administrator and Trustee	
				Compared	8-37
[8.53]			2.	Guidelines for Fiduciary Investments	8-39
[8.54]			3.	Delegating Investment or Management	
				Functions	8-45
[8.55]			4.	Anticipating Potential Litigation with Respect	
				to Fiduciary's Conduct	8-46
[8.56]		D.	Pla	nning for Tax Savings	8-47
[8.57]			1.	Income Tax Planning	8-47
[8.58]			2.	Estate Tax Planning	8-52
[8.59]	V.	Fo	llow	Through	8-53
[8.60]		A.	Kee	eping Proper Records	8-53
[8.61]			1.	Status Report	8-53
[8.62]			2.	Building an Audit File	8-53
[8.63]			3.	Keeping a Timetable and a Tickler System	8-54
[8.64]		B.	Dea	aling with Creditors	8-54
[8.65]			1.	Notice to Creditors and Effect of Failure to	
				Present Claim; The "Seven-Month Creditor	
				Period"	8-55
[8.66]			2.	Priority of Debts and Claims	8-55
[8.67]			3.	Claims Procedure	8-56
[8.68]				a. Form and Verification of Notices; Source	
				of Notice	8-56
[8.69]				b. Allowance or Rejection of Claims	8-56
[8.70]				c. Effect of Allowance of Claims	
[8.71]				d. Effect of Rejection of Claims	8-57
[8.72]				e. Proceeding to Determine Validity and	
-				Enforceability of Claims	8-58
[8.73]				f. Determination of Issues Between the	
-				Fiduciary and the Estate; Suspension of	
				Statute of Limitations	8-58

[8.74]	4.	Contingent or Unliquidated Claims; Retention	l
		of Assets for Estate Taxes	8-59
[8.75]	5.	Compromise of Disputed or Unsettled Debt;	
		Compromise of Infant's Claim for Action in	
		Supreme Court	8-59
[8.76]	C. Dis	tributing Assets	8-60
[8.77]	1.	Consideration of Creditors' Claims	8-60
[8.78]	2.	Abatement of Legacies	8-60
[8.79]	3.	Consideration of Estate and Income Tax	
		Ramifications of Distributions, Including	
		Apportionment of Estate Taxes	8-61
[8.80]	4.	Consideration of Claims of Other Beneficiarie	es;
		Right of Election; "Family Exemption";	
		Different Types of Legacies	8-62
[8.81]	5.	Payment of Share of Infant, Incompetent or	
		Unknown Beneficiaries	8-62
[8.82]	6.	Time of Payment of Legacies and Distributive	•
		Share	8-63
[8.83]	7.	Receipt, Release and Refunding	
		Agreement	8-63
Appendix A	Est	ate Administration Timetable	8-65
Appendix B		liminary Analysis	8-77
• •		,	
Chapter 9	Federal	Estate Taxation	
	Robert	S. Reynolds, Esq.	
	Profess	sor William P. LaPiana	
[9.0] I.	Introdu	ction	9-3
[9.1] II.	The Fe	deral Estate Tax	9-6
[9.2]	A. Nat	ture of the Federal Estate Tax	9-6
[9.3]	B. Det	termining the Federal Estate Tax	9-8
[9.4]	1.	Determine the "Gross Estate"	9-8
[9.5]	2.	Determine the "Taxable Estate"	9-9
[9.6]	3.	Determine the "Adjusted Taxable Estate"	9-9
[9.7]	4.	Determine the "Tentative Tax"	9-9
[9.8]	5.	Determine the "Gross Estate Tax"	9-10
[9.9]	6.	Determine the "Net Estate Tax"	9-10
[9.10] III.	Form 7	06—General Information	9-10
[9.11]	A. Esta	ates Required to File a Return	9-10
[9.12]	B. Wh	o Must File the Return	9-11
[9.13]	C. Wh	en the Return Must Be Filed	9-12
[9.14]	1.	In General	9-12
[9.15]	2.	Extension of Time to File	9-12

[9.16]			3.	Ma	iling the Return	9-13
[9.17]		D.	Am	end	ed Returns	9-13
[9.18]		E.	Rec	ord	s and Supporting Documentation	9-13
[9.19]		F.	Lial	bilit	y for the Estate Tax	9-14
[9.20]		G.	Pov	ver (	of Attorney	9-15
[9.21]		H.	Ado	litio	ns to Tax and Penalties	9-15
[9.22]		I.	Nor	res	idents Who Are Not Citizens of the	
			Uni	ted	States	9-15
[9.23]	IV.	Gro	oss E	Estat	e: Form 706, Schedules A–I	9-16
[9.24]		A.	Sch	edu	le A—Real Estate	9-18
[9.25]			1.	Ge	neral Statement	9-18
[9.26]			2.	En	cumbrances	9-18
[9.27]			3.	Exe	ecutory Contracts to Purchase Real	
				Pro	perty	9-18
[9.28]			4.	Rea	al Property Excluded from Schedule A	9-18
[9.29]			5.	Va	luation of Real Estate	9-19
[9.30]			6.	Sal	e Price vs. Appraised Value	9-19
[9.31]			7.		ctional Ownership	9-20
[9.32]			8.	Qu	alified Conservation Easement	
					clusion	9-20
[9.33]			9.	Spe	ecial Use Valuation	9-20
[9.34]		B.	Sch	edu	le B—Stocks and Bonds	9-22
[9.35]			1.		neral Statement	9-22
[9.36]			2.		vidends and Interest	9-22
[9.37]			3.	De	scription of Stocks and Bonds	9-22
[9.38]			4.		ck Sold or Purchased	9-23
[9.39]			5.	Va	luation of Stocks and Bonds	9-24
[9.40]				a.	Value Based on Selling Prices	9-24
[9.41]					Value Based on Bid and Asked Prices	9-25
[9.42]				c.	Value Based on Incomplete Selling Prices	
					or Bid and Asked Prices	9-25
[9.43]				d.	Value Where Selling Prices or Bid and	
					Asked Prices Do Not Reflect Fair Market	
					Value (The "Blockage" Rule)	9-25
[9.44]				e.	Value Where Selling Prices or Bid and	
					Asked Prices Are Unavailable (Closely	
					Held Stock)	9-26
[9.45]				f.	Buy-Sell Agreements/Contracts to	
					Purchase	9-27
[9.46]				-	Pledged Securities	9-27
[9.47]				h.	Securities with Nominal or No Value	9-27
[9.48]		C.	Sch	edu	le C—Mortgages, Notes and Cash	9-28

[9.49]		1.	General Statement	9-28
[9.50]		2.	Mortgages	9-28
[9.51]		3.	Notes	9-28
[9.52]		4.	Cash on Hand or on Deposit	9-28
[9.53]		5.	Contract by the Decedent to Sell Land or	
			Other Property	9-29
[9.54]	D.	Sch	edule D—Insurance on the Decedent's Life	9-30
[9.55]		1.	General Statement	9-30
[9.56]		2.	Insurance Receivable by the Estate	9-30
[9.57]		3.	Insurance Receivable by Beneficiaries Other	
			Than the Estate	9-31
[9.58]		4.	Transfers During Decedent's Life	9-32
[9.59]		5.	Reporting Requirements	9-32
[9.60]	E.	Sch	edule E—Jointly Owned Property	9-33
[9.61]		1.	Types of Joint Property	9-33
[9.62]		2.	Reporting Requirements	9-33
[9.63]		3.	Qualified Joint Interests Held by Decedent	
			and Spouse	9-34
[9.64]		4.	Other Joint Property	9-34
[9.65]			a. Amount Includable	9-34
[9.66]			b. Joint Property Acquired by Gift, Devise,	
			Bequest, Etc.	9-35
[9.67]			c. Consideration Furnished Test	9-35
[9.68]			d. Joint Bank Accounts	9-36
[9.69]		5.	Tenancies in Common	9-36
[9.70]		6.	Applicable Law	9-36
[9.71]	F.	Sch	edule F—Other Miscellaneous Property Not	
		Rep	oortable Under Any Other Schedule	9-37
[9.72]		1.	General Statement	9-37
[9.73]		2.	Valuation of Household Goods and Personal	
			Effects	9-38
[9.74]		3.	Articles Having Artistic or Intrinsic Value	9-39
[9.75]		4.	Distribution of Household Goods or Personal	
			Effects	9-39
[9.76]	G.	Sch	edule G—Transfers During Decedent's	
		Life	e	9-40
[9.77]		1.	Transfers with Retained Life Estate—I.R.C.	
			§ 2036	9-40
[9.78]		2.	Transfers Taking Effect at Death—I.R.C.	
			§ 2037	9-41
[9.79]		3.	Revocable Transfers—I.R.C. § 2038	9-42

[9.80]			4. Gifts Within Three Years of Death—I.R.C.	
			§ 2035	9-43
[9.81]			5. Bona Fide Sales for an Adequate and Full	
			Consideration	9-43
[9.82]		H.	Schedule H—Powers of Appointment	9-44
[9.83]			1. General Powers of Appointment	9-44
[9.84]			2. Fractional Powers	9-45
[9.85]			3. Date Power Created	9-46
[9.86]			4. Capacity to Exercise Power	9-46
[9.87]			5. Lapse of Power	9-46
[9.88]			6. Estate Taxes Attributable to Power of	
			Appointment Property	9-47
[9.89]		I.	Schedule I—Annuities	9-47
[9.90]			1. General Statement	9-47
[9.91]			2. Amount of Annuity Includable	9-48
[9.92]			3. Annuity Defined	9-48
[9.93]	V.	Alt	ernate Valuation	9-49
[9.94]		A.	General Statement	9-49
[9.95]		B.	Alternate Valuation Election	9-49
[9.96]		C.	Property Affected by Mere Lapse of Time	9-50
[9.97]				9-51
[9.98]	VI.	Ba	sis	9-51
[9.99]		A.	In General	9-51
[9.100]		B.	Denial of Adjustment to Basis for Property	
			Reacquired Within One Year of Gift	9-53
[9.101]		C.	Denial of Adjustment to Basis for Income in	
			Respect of a Decedent	9-54
[9.102]		D.	EGTRRA Basis Rules for 2010	9-55
[9.103]	VII.	Ex	penses, Indebtedness and Taxes	9-55
[9.104]		A.	Determining the Taxable Estate	9-55
[9.105]			Estate Tax Deduction vs. Income Tax	
			Deduction	9-56
[9.106]		C.	Property Chargeable with Expenses	9-56
[9.107]				9-57
[9.108]			Deductions for Expenses of Administering	
				9-57
[9.109]				9-57
[9.110]			2. Attorney Fees	9-58
[9.111]			·	9-59
[9.112]			•	9-59
[9.113]		F.	Expenses of Administering Property Not Subject	
-				9-60

[9.114]	G.	Claims Against the Decedent's Estate	9-60
[9.115]		1. Marital Settlements	9-61
[9.116]		2. Final Medical Expenses	9-61
[9.117]	H.	Taxes	9-62
[9.118]	I.	Mortgages and Liens	9-63
[9.119]	J.	Losses Incurred During the Administration of the	
			9-63
[9.120] VIII	[.Th	e Marital Deduction	9-63
[9.121]	A.	Nature and Amount of the Marital Deduction	9-63
[9.122]	B.	Marital Deduction Requirements	9-66
[9.123]		1. Citizenship—Qualified Domestic Trusts	9-66
[9.124]		2. Surviving Spouse	9-67
[9.125]		3. Interest in Property Passing from Decedent	9-68
[9.126]			9-69
[9.127]	C.	Qualified Terminable Interests	9-69
[9.128]		1. Limited Survivorship Provisions	9-69
[9.129]		2. Life Estate with Power of Appointment in	
		Surviving Spouse	9-70
[9.130]		3. Life Insurance or Annuity Payments with	
		Power of Appointment in Surviving	
		Spouse	9-70
[9.131]		4. Qualified Terminable Interest Property	
		(QTIP)	9-71
[9.132]		a. Qualifying Income Interest for Life	9-71
[9.133]		b. QTIP Election	9-72
[9.134]		c. Estate Taxation of QTIP in Surviving	
		Spouse's Estate	9-73
[9.135]		d. Lifetime Disposition of QTIP by Surviving	<b>T</b>
		Spouse	9-73
[9.136]	D.	Marital Deduction Trusts	9-73
[9.137]	E.	Disclaimed Property	9-74
[9.138] IX.	Th	e Charitable Deduction	9-75
[9.139]	A.	Nature and Amount of the Charitable	
		Deduction	9-75
[9.140]	B.	Qualified Charitable Deduction Transfers	9-75
[9.141]	C.	Reformation	9-77
[9.142]	D.	Disclaimers and Terminations of Powers	9-77
[9.143] X.	Qu	nalified Family-Owned Business Interest (QFOBI)	
	De	eduction	9-77
[9.144] XI.	Qu	alified Disclaimers	9-78
[9.145]	A.	General Statement	9-78
[9.146]	B.	Disclaimer by Spouse Benefiting Spouse	9-79

[9.147]	C.	Partial Disclaimers	9-79
[9.148] 🛭	XII. Fe	deral Estate Tax Rates	9-79
[9.149] <b>X</b>	XIII.Cr	edits Against the Estate Tax	9-80
[9.150]	A.	Unified Credit	9-80
[9.151]	В.	Credit for State Death Taxes	9-84
[9.152]		Credit for Gift Tax	9-86
[9.153]	D.	Credit for Federal Estate Tax on Prior	
		Transfers	9-86
[9.154]		Foreign Death Tax Credit	9-87
[9.155]	F.	Other Statutory Provisions Relating to State and	
		Foreign Death Tax Credits	9-88
[9.156]		1. Credit for Death Taxes on Remainders	9-88
[9.157]		2. Recovery of Taxes Claimed as a Credit	9-88
		yment of the Federal Estate Tax	9-89
[9.159]		Extension of Time for Paying Tax	9-89
[9.160]	В.	Extension of Time for Payment Where Estate	
		Consists Largely of Interests in Closely Held	
		Businesses	9-90
[9.161]		1. General Statement	9-90
[9.162]		2. Reduced Interest Rate	9-91
[9.163]		3. Acceleration Events	9-91
[9.164]	C.	Redemption of Stock to Pay Death Taxes and	
FO 1 6 5 1 3 7	X 7 FD1	Estate Expenses	9-92
[9.165]X	V.The	Future of the Federal Estate Tax	9-92
Appendix	х А	Form 706—United States Estate Tax Return	
		(with Instructions)	9-95
Appendix	х В	Form 712—Life Insurance Statement (with	
		Instructions)	9-179
Appendix	х С	Form 709—United States Gift Tax Return (with	
		Instructions)	
Appendix	x D	Form 706-CE—Certificate of Payment of Foreign	
		Death Tax (with Instructions)	9-209
Appendix	xЕ	Form 706-NA—United States Estate Tax Return	
		for Estate of Nonresident Not a Citizen of the	
	_	United States (with Instructions)	9-213
Appendix	x F	Form 4768—Application for Extension of Time	
		to File a Return and/or Pay U.S. Estate Taxes	
	<u> </u>	(with Instructions)	9-223
Appendix	x G	Form 2848—Power of Attorney and Declaration	0.000
	**	1 ,	9-229
Appendix	хН	Form 8971—Information Regarding Beneficiaries	
		Acquiring Property From a Decedent (with	
		Instructions)	9-239

Chapter 10	New York State Estate Tax	
	Robert S. Reynolds, Esq.	
	Professor William P. LaPiana	
[10.0] I.	Introduction	10-3
[10.1] II.	History of the New York State Estate Tax	10-3
[10.2]	A. New York State Transfer Tax Prior to 1930	10-3
[10.3]	B. New York State Estate Tax From 1930 to 1963	10-4
[10.4]	C. New York State Estate Tax From 1963 to 2014	10-4
[10.5]	D. New York State Estate Tax Since 2014	10-5
[10.6]	E. The Problem of Federal and State Conformity	10-6
[10.7] III.	Sources of the New York Estate Tax Law	10-7
[10.8] IV.	Estates Which Must File a New York State Estate	
	Tax Return	10-8
[10.9]	A. New York State Resident Decedents	10-8
[10.10]	B. New York State Nonresident Decedents	10-9
[10.11]	C. Determining Residency—the Decedent's	
	Domicile	10-10
[10.12]	D. Nature and Situs of the Decedent's	
	Property1	0-11
[10.13] V.	The New York State Estate Tax Return	10-12
[10.14]	A. New York State Taxable Estate	0-13
[10.15]	1. Alternate Valuation	0-14
[10.16]	2. Property with a Situs Outside New York	
	State	0-14
[10.17]	3. Taxation of Nonresident Decedent's	
	Property1	0-14
[10.18]	4. Certain Limited Powers of Appointment 1	0-15
[10.19]	5. Taxable Gifts1	0-15
[10.20]	6. New York State Estate Tax Deductions—	
	Generally1	0-16
[10.21]	7. New York State Estate Tax Marital	
	Deduction1	
[10.22]	8. Works of Art on Loan in New York State 1	
[10.23]	B. Reporting Unresolved Litigation	0-19
[10.24]	C. Computation of the New York State Estate Tax 1	0-19
[10.25]	1. Applicable Credit Amount	0-20
[10.26]	2. Accelerated Phase Out of Applicable Credit	
	Amount1	0-20
[10.27]	3. Danger Zone of Extreme Marginal Tax	
	Rates1	0-20
[10.28]	4. Estates of Astronauts and 9/11 Victims	
	Exemption 1	0 - 21

[10.29] VI.	Fil	ing the New York State Estate Tax Return	10-22
[10.30]	A.	Executor Files the Return	. 10-22
[10.31]	B.	When to File the Return	. 10-22
[10.32]	C.	Where to File the Return	. 10-23
[10.33]	D.	Attachments to the Return	. 10-24
[10.34] VII.	Pay	ying the New York State Estate Tax	10-24
[10.35]		Liability for the Tax	
[10.36]	B.	Releases of Lien	. 10-25
[10.37]	C.	When to Pay the Tax	. 10-26
[10.38]		1. Payment Due Date	
[10.39]		2. Extensions of Time to Pay	. 10-26
[10.40]		3. Installment Payments	. 10-27
[10.41]	D.	Interest and Penalties	. 10-27
[10.42]		1. General Considerations	. 10-27
[10.43]		2. Interest	. 10-27
[10.44]		3. Penalties	. 10-28
[10.45]		a. Addition to Tax for Late Filing	. 10-28
[10.46]		b. Addition to Tax for Late Payment	. 10-28
[10.47]		c. Other Penalties	. 10-29
[10.48] VIII	. An	nended Returns, Reports of Federal Changes and	
	Re	fund Claims	10-30
[10.49] IX.	Au	dits and Closing Letters	10-31
[10.50] X.	Su	rrogate's Court Proceedings	10-32
[10.51]	A.	Requests for Waivers of Citation and Consents	. 10-32
[10.52]	B.	Probate or Administration of Nonresident's	
		Estate	. 10-32
[10.53]	C.	Settlements and Compromises of Litigation	. 10-33
[10.54]	D.	Judicial Accountings	. 10-33
[10.55]	E.	Review of Tax Department Determinations	. 10-34
Appendix A		Form ET-706—New York State Estate	
• •		Tax Return	. 10-35
Appendix B		Form ET-133—Application for Extension of	
• •		Time to File and/or Pay Estate Tax	. 10-47
Appendix C		Form ET-117—Release of Lien of Estate Tax	
Appendix D		Form ET-30—Application for Release(s) of	
		Estate Tax Lien	. 10-53
Appendix E		Form ET-85—New York State Estate	
		Tax Certification	. 10-55
Appendix F		Form ET-141—New York State Estate Tax	
- <b>-</b>		Domicile Affidavit	. 10-57
Appendix G		Form ET-20—Stipulation Reserving Domicile	. 10-59

Appendix H	Form ET-415—Application for Deferred
• •	Payment of Estate Tax10-61
Appendix I	Form ET-95—Claim for Refund of New York
	State Estate Tax
Appendix J	Form ET-14—Estate Tax Power of Attorney 10-67
Appendix K	Form AU-67—Instructions to Request a Waiver
	and Consent10-69
Appendix L	Form CMS-1-MN—Request for Conciliation
	Conference
Appendix M	Publication 131—Your Rights and Obligations
	Under the Tax Law10-73
Appendix N	Publication 55 Designated Private Delivery
	Services
Appendix O	Information for Same-Sex Married Couples
	TSB-M-13(10)M
Appendix P	Generation-Skipping Transfer Tax Repealed
	TSB-M-14(2)M10-85
Appendix Q	New York State Estate Tax Reformed
	TSB-M-14(6)M10-87
Appendix R	2015 Legislation Amending the NYS Estate Tax
	TSB-M-15(3)M
Appendix S	Treatment of Certain Deductions for NYS Estate
	Tax, TSB-M-15(4)M10-95
Appendix T	Summary of Estate Tax Legislation Enacted in
	2016, TSB-M-16(8)M 10-101
Appendix U	Summary of Estate Tax Legislation Enacted in
	2019, TSB-M-19(1)E 10-103
C1 4 44	T: 1
Chapter 11	Fiduciary Income Tax Planning
	Michael E. O'Connor, Esq.
[11.0] I.	Introduction
[11.1] II.	Fundamentals of Fiduciary Income Taxation
[11.2]	A. General Considerations
[11.3]	B. Basic Terminology
[11.4]	1. Simple Trust
[11.5]	2. Complex Trust
[11.6]	3. Distributable Net Income
[11.7]	4. Distributions Deduction
[11.8]	5. Allocation of Income and Expenses
[11.9]	6. The "Tier" System 11-7
[11.10]	7. Distributions in Kind
[11.11]	8. Multiple Trusts 11-9

[11.12]	9.	The "65 Day" Rule 11-9
[11.13]	10.	Termination; Terminating Year 11-9
[11.14]	11.	Excess Deductions; Carryovers11-10
[11.15]	12.	Separate Share Rule11-10
[11.16] III.	Conside	erations Affecting Decedent's Final Income
	Tax Re	turn11-12
[11.17]	A. Gen	neral Considerations11-12
[11.18]		uirements of Filing11-12
[11.19]	C. Elec	ction to File a Joint Return11-13
[11.20]	1.	General Considerations 11-13
[11.21]		Disaffirmance of Joint Return11-14
[11.22]	3.	Apportioning Tax Liability11-15
[11.23]	4.	Advantages of Joint Return 11-15
[11.24]	5.	Disadvantages of Joint Return11-16
[11.25]	6.	Planning Tip 11-17
[11.26]	D. Ded	luctibility of Medical Expenses11-18
[11.27]	1.	General Considerations
[11.28]	E. Acc	rued Interest on United States Series E or
	EE I	Bonds11-19
[11.29]	1.	General Considerations 11-19
[11.30]	2.	Planning Tip11-20
[11.31] IV.	Other P	ost-Mortem Planning Advice 11-20
[11.32]	A. Inco	ome in Respect of a Decedent11-20
[11.33]	1.	General Considerations
[11.34]	2.	Planning Tip11-22
[11.35]		ctions Available to Executor or
	Adn	ministrator 11-23
[11.36]		
[11.50]	1.	Alternate Valuation Date11-23
[11.37]	1. 2.	
		Alternate Valuation Date11-23
	2.	Alternate Valuation Date
[11.37] [11.38] [11.39]	2.	Alternate Valuation Date
[11.37] [11.38]	2.	Alternate Valuation Date
[11.37] [11.38] [11.39]	2.	Alternate Valuation Date
[11.37] [11.38] [11.39] [11.40]	2.	Alternate Valuation Date
[11.37] [11.38] [11.39] [11.40] [11.41]	2. 3.	Alternate Valuation Date
[11.37] [11.38] [11.39] [11.40] [11.41] [11.42] [11.43] [11.44]	2. 3.	Alternate Valuation Date
[11.37] [11.38] [11.39] [11.40] [11.41] [11.42] [11.43] [11.44] [11.45]	2. 3.	Alternate Valuation Date
[11.37] [11.38] [11.39] [11.40] [11.41] [11.42] [11.43] [11.44]	2. 3.	Alternate Valuation Date
[11.37] [11.38] [11.39] [11.40] [11.41] [11.42] [11.43] [11.44] [11.45] [11.46] [11.47]	<ul><li>3.</li><li>4.</li></ul>	Alternate Valuation Date
[11.37] [11.38] [11.39] [11.40] [11.41] [11.42] [11.43] [11.44] [11.45] [11.46]	<ul><li>3.</li><li>4.</li></ul>	Alternate Valuation Date

[11.50]	C. Retirement Benefits
[11.51]	1. Lump Sum Distributions11-33
[11.52]	2. Rollovers11-34
[11.53]	3. Plan Distributions11-35
[11.54]	a. General Considerations11-35
[11.55]	b. Planning Tip11-36
[11.56]	4. Retirement Distribution Planning11-36
[11.57]	a. Planning Tip11-36
[11.58]	b. Warning11-36
[11.59]	D. Estimated Payments of Fiduciary Income
	Taxes
[11.60]	E. Excess Estimated Tax Payments11-37
Appendix	Form 1041-T—Allocation of Estimated Tax
	Payments to Beneficiaries11-39
Chanter 12	Fiduciary Accounting
Chapter 12	Ian W. MacLean, Esq.
[12.0] I.	Preliminary Concepts
[12.0] 1.	A. Distinction Between Probate and Non-Probate
[12.1]	Property
[12.2]	1. Probate Property
[12.2]	2. Non-Probate Property
[12.4]	B. Distinction Between Principal and Income 12-5
[12.4]	1. Uniform Principal and Income Act
[12.6]	2. Effective Dates
[12.7]	3. Definitions and Allocation Rules
[12.8]	4. Optional Unitrust
[12.9]	5. Trustee's Power to Adjust12-12
[12.10]	6. For Tax Purposes12-13
[12.11] II.	Record Keeping 12-13
[12.12]	A. Duty to Maintain Records12-13
[12.13]	B. Forms of Records
[12.14] III.	Preparing the Account
[12.15]	A. Form of Accounting12-15
[12.16]	1. Official Forms
[12.17]	2. Style12-16
[12.18]	B. Contents of Schedules
[12.19]	1. Schedule A12-16
[12.20]	2. Schedule A-1
[12.21]	3. Schedule B12-18
[12.22]	4. Schedule C12-18
[12.23]	5. Schedule C-1

[12.24]	6. Schedule D12-19
[12.25]	7. Schedule E
[12.26]	8. Schedule F
[12.27]	9. Schedule G
[12.28]	10. Schedule A-212-21
[12.29]	11. Schedule C-212-22
[12.30]	12. Schedule E-1
[12.31]	13. Schedule G-112-22
[12.32]	14. Schedule H
[12.33]	15. Schedule I
[12.34]	16. Schedule J
[12.35]	17. Schedule K
[12.36]	18. Accounting Affidavit12-26
[12.37]	C. Apportionment of Estate Taxes12-26
[12.38]	D. Accounting Adjustments
[12.39]	1. The Warms Adjustment
[12.40]	2. Underproductive Property 12-30
[12.41]	3. Funding of Marital Shares12-30
[12.42]	4. Income Tax Adjustments
[12.43]	5. Avoiding Adjustments
[12.44]	E. Allocation of Income
[12.45]	F. Rights of the Family Unit
[12.46]	G. Computing Commissions
[12.47]	H. Computing Distributive Shares 12-40
[12.48] IV.	Attorney Fees
[12.49]	A. General Considerations
[12.50]	B. Statutory Authority for Payment of Legal Fees 12-43
[12.51]	C. Procedure
[12.52]	D. Ex Parte Proceedings
[12.53]	E. Standards
Appendix A	Wrongful Death Actions 12-49
Appendix B	Accounting Schedules
Chapter 13	Settling the Account
	Paul S. Forster, Esq.
[13.0] I.	Introduction
[13.1] II.	Duty and Right to Account
[13.2]	A. General Considerations
[13.3]	B. Surrogate's Court Rules 13-4
[13.4]	C. Compulsory Accounting Proceedings 13-5
[13.5]	D. Informal Accountings
[13.6]	1. General Considerations

[13.7]	2.	Filing Informal Settlement Agreements 13-8
[13.8]	3.	Decree Based on Informal Settlement 13-9
[13.9]	4.	Effect of Virtual Representation
[13.10]	5.	Advantages of Informal Proceedings
[13.11] III.	Judici	al Settlement of the Accounting 13-11
[13.12]	A. G	eneral Considerations 13-11
[13.13]	B. Fo	ormal Settlement Where Necessary or
	A	dvisable 13-11
[13.14]	1.	When Parties Fail to Agree 13-11
[13.15]	2.	When Infant or Other Party Under
		Disability Is Involved
[13.16]	3.	When Release Would Be Difficult to
		Obtain13-13
[13.17]	4.	When Charity Is Interested Party13-13
[13.18]	5.	When Other Relief Is Sought13-14
[13.19]	C. In	termediate vs. Final Accountings13-15
[13.20]	1.	Distinction
[13.21]	2.	Basis for Court's Entertaining an
		Intermediate Accounting
[13.22]	D. Pr	ocedure for a Voluntary Judicial Accounting 13-16
[13.23]	1.	General Considerations13-16
[13.24]	2.	Jurisdiction in an Accounting Proceeding 13-18
[13.25]		a. Subject Matter Jurisdiction and Venue 13-18
[13.26]		(1) Estates and Testamentary Trusts13-18
[13.27]		(2) Inter Vivos Trusts13-19
[13.28]		b. In Personam Jurisdiction13-20
[13.29]	3.	The Petition
[13.30]		a. General Considerations13-20
[13.31]		b. Contents of the Petition13-21
[13.32]		(1) Jurisdictional Statement 13-21
[13.33]		(2) Statement of Interested Parties 13-22
[13.34]		(3) The Prayer for Relief 13-23
[13.35]	4.	The Citation
[13.36]	5.	Serving the Citation
[13.37]	6.	Guardians Ad Litem
[13.38]		a. General Considerations13-25
[13.39]		b. When a Guardian Ad Litem Is Not
		Required13-26
[13.40]		c. Designated Guardians13-27
[13.41]	7.	•
[13.42]		a. Uncontested Matters
[13.43]		b. Contested Matters 13-28

[13.44]	8.	Th	e Decree	
[13.45]		a.	General Considerations .	13-31
[13.46]		b.	Effect of Decree	

### EDITOR-IN-CHIEF

# GARY R. MUND, ESQ.

Gary R. Mund currently maintains his law practice in Manhattan, focusing on trusts, estates, and Surrogate's Court litigation. He was formerly the miscellaneous clerk for the Kings County Surrogate's Court in Brooklyn, and retired from the Unified Court System in 2010, having held various law titles in the Surrogate's Courts for 30 years.

After earning his J.D. from New York Law School, Mr. Mund was in private practice and then served as a court attorney for the New York County Surrogate's Court and court attorney/referee, probate clerk, and miscellaneous clerk for the Kings County Surrogate's Court until his Court System retirement. He has served as an adjunct professor at Baruch College of the City University of New York and Marymount Manhattan College and visiting professor at C.U.N.Y. Law School, and has mentored students enrolled in internship programs at Brooklyn and Cardozo Law Schools. He is admitted to the state and local bars of New York, New Jersey, Florida, and the District of Columbia, the U.S. District Courts for the Southern and Eastern Districts of New York and the District of New Jersey, and the United States Supreme Court.

Mr. Mund is a member of the New York State Bar Association and its Trusts and Estates Law, Elder Law and Special Needs, and Senior Lawyers Sections. He also serves on the State Bar's Committee on Communications and Publications and Committee on Lawyers in Transition. He is a past second district representative on the Trusts and Estates Law Section's Executive Committee, and currently co-chairs the Section's Committee on Technology. He served as program chair for *The Insider's Guide to the Surrogate's Court*, and lectures for various bar associations and other organizations on a regular basis. His publication credits include Cox-Arenson-Medina, *New York Civil Practice* (Matthew Bender, New York), *Administration of Decedents' Estates and Related Surrogate's Court Proceedings* (NYSBA), and *Trusts and Estates Law Section Newsletter* (NYSBA). Mr. Mund is the current Editor-in-Chief of *Probate and Administration of New York Estates*.

Mr. Mund also helped develop and continues to revise and update the New York State Bar Association's Surrogate's Court Forms, a computer program now used by attorneys throughout the State of New York, which is designed to assist in and automate the preparation of many Surrogate's Court and related documents.

### **ABOUT THE AUTHORS**

# LUCY M. BERKMAN, ESQ.

Lucy M. Berkman is Special Counsel at Phillips Lytle LLP. She concentrates her practice in the areas of estate planning, estate and trust administration, Medicaid advisement and planning, accountings, kinship matters, wrongful death compromises, and guardianship proceedings. Mrs. Berkman is licensed to practice law in both New York and Florida. She assists clients with the preparation of estate plan documents, including wills, trusts, powers of attorney, and advance directives, and represents fiduciaries and beneficiaries in estate and trust proceedings.

### BENJAMIN S. CRANSTON, ESQ.

Benjamin S. Cranston concentrates his practice in the areas of estate and trust planning, including assisting clients with issues related to estate and gift taxation, elder law, and Medicaid, as well as trust and estate administration. His experience includes preparation of customized estate plan documents for clients and representation of fiduciaries and beneficiaries in estate and trust administration matters.

### PAUL S. FORSTER, ESQ.

Paul S. Forster is in the private practice of law in Tuckahoe, New York. He is a former Commissioner of the New York City Tax Commission, and a former District Tax Attorney for the New York State Department of Taxation and Finance.

Mr. Forster is a member of the New York State Bar Association, where he is on the executive committee of the Trusts and Estates Law Section and is Chair of the Estate Planning Committee. He also is a member of the Westchester County Bar Association.

Mr. Forster presently authors the *State of Estates* column in the New York State Bar Association, Trusts and Estates Law Section Journal quarterly, and also has authored or co-authored many articles in the Trusts and Estates Law Section Journal, including two on the New York State Estate Tax 'cliff' and the 'Santa Clause' to ameliorate same. Mr. Forster also has contributed articles to the Westchester County Bar Association's annual Bar Journal and monthly magazine. He co-authored the monthly estate law update column *State of Estates* in the Brooklyn Bar Association *Barrister* for 17 years. He also co-authored columns in the *New York Law Journal* and in *One on One*, a publication of the New York State Bar

Association. He has been a contributing author to Matthew Bender's Rohan, New York Civil Practice, EPTL, and to Matthew Bender's Cox Arenson. Medina, New York Civil Practice, SCPA.

Mr. Forster's lecturing experience includes Surrogate's practice, estate planning, taxation and administration of estates for the New York State Bar Association, New York State Trial Lawyers, New York County Lawyers Association, Brooklyn Bar Association, Richmond County Bar Association, New York State Surrogate's Association, New York County Surrogate's Court Guardian's Course, New York Women's Bar Association, New York Law School, Military Legal Officer CLE Program, Richmond County Medical Society, Newsweek Magazine pre-retirement seminars, and Surrogate's Court personnel OCA advancement examination preparation/review course (privately run).

Mr. Forster's fields of practice are (1) Surrogate's Court (proceedings and litigation,) probate, will contests, letters of administration, kinship proceedings, discovery proceedings, settling and contesting fiduciary's accounts, preparation of wills and trusts, compromising decedent's causes of action, and liquidation and administration of estates; and (2) Taxation (estate and individual), planning, returns, proceedings, audits, and litigation.

Mr. Forster graduated from the City College of New York (B.S.), New York Law School, (J.D. *cum laude*), and New York University School of Law (LLM, Taxation).

# ARLENE HARRIS, ESQ.

Arlene Harris (d. 2018) was Senior Counsel to Arnold & Porter Kaye Scholer and was a member of the Private Clients Department and resident in the firm's New York office. She practiced for more than 40 years and focused on estate and trust litigation, and also practiced in the area of estate and trust planning, probate and administration of estates and trusts, and pre- and post-nuptial agreements.

Ms. Harris was a Fellow of The American College of Trust and Estate Counsel, the former Chair of the Executive Committee of the Trusts and Estates Law Section of the New York State Bar Association, and the former Chair and member of the OCA Advisory Committee on the Surrogate's Courts. She was also a former member of the Surrogate's Court Committee of the City Bar Association, the International Academy of Estate and Trust Law, the New York City Estate Planning Council, and the

UJA-Federation Trusts & Estates Specialty Group, which she also chaired. She lectured frequently and was an adjunct professor of law at St. John's University School of Law. She was the former Chief Law Assistant of the New York County Surrogate's Court, and a former Assistant Attorney General of the New York State Department of Law.

# SHIFRA HERZBERG, ESQ.

Shifra Herzberg is special counsel at Sullivan & Cromwell LLP. She focuses her practice on estate planning and estate administration for high net worth individuals. Ms. Herzberg provides advice in planning, implementing, and administering tax-efficient wealth transfer, business succession, and charitable strategies consistent with the family's goals and values. She also provides advice with respect to prenuptial and postnuptial agreements. Her practice includes planning for U.S. and non-U.S. citizens and residents. Ms. Herzberg has advised on the formation and administration of private foundations and charitable trusts. She received her Juris Doctor degree from Benjamin N. Cardozo School of Law and her Master of Laws (LL.M.) in Taxation from New York University.

### PROFESSOR WILLIAM P. LAPIANA

William P. LaPiana is Dean of Faculty and Rita and Joseph Solomon Professor of Wills, Trusts, and Estates and Director of Estate Planning, Graduate Tax Program, at New York Law School. Professor LaPiana holds both a Ph.D. in History and a J.D. from Harvard, where he also received his B.A. and an M.A. After graduating from Harvard Law School in 1978, he spent four years as an associate at Davis Polk & Wardwell in New York. In 1987, after four years at the University of Pittsburgh Law School, he joined the faculty at New York Law School.

Professor LaPiana has been active with the trusts and estates sections of both the New York State and the American Bar Associations, and is an academic fellow of the American College of Trust and Estate Counsel, serving on its Committees on State Laws and Legal Education and served as co-chair of the latter. He is also a member of the American Law Institute and served on the Members Consultative Groups for the Restatements (Third) of Trusts and of Property (Donative Transfers). Since 2009, he has been a member of the Office of Court Administration Surrogate's Court Committee and has served on the New York City Bar Associations Surrogate's Court and Trusts and Estate Committee.

# IAN W. MACLEAN, ESQ.

Ian W. MacLean is a trusts and estates litigator and counselor. He counsels and represents beneficiaries, distributees, fiduciaries, and creditors in trust, estate, and fiduciary litigation matters, including all manner of proceedings in the New York State Surrogate's Court. Representative proceedings include will contests (probate), intestate administration, discovery, turnover, revocation and removal of fiduciaries, cy pres, accountings, fiduciary responsibility and liability issues, Attorney General/Charities Bureau matters, and fiduciary taxation. Mr. MacLean also counsels and represents interested parties in uncontested estate administration, trust administration, and guardianship proceedings, and handles fiduciary tax audits with the IRS and the New York State Department of Financial Services. In addition to a successful litigation career, Mr. MacLean has substantial experience and success resolving estate and trust controversies through negotiation and settlement, especially when litigation solutions are not productive or economically practical.

Mr. MacLean, who has been admitted to practice law since January 1993, has been rated AV-preeminent by Martindale-Hubbell Peer Review since 2013, is peer-elected to Metro-NYC Super Lawyers as a trusts and estates litigator, and is rated 10/10 on AVVO. He graduated *magna cum laude* from St. Lawrence University, earned a J.D. *cum laude* from New York Law School, and received an LL.M. in taxation from New York University School of Law.

Mr. MacLean is Vice-Chair of the NYSBA Sections Caucus and an active member of the Executive Committee of the NYSBA Trusts & Estates Law Section (Member at Large), a member of the Westchester County Bar Association, Trusts and Estates Section, and a former member of the NYCBA Committees on Trusts, Estates & Surrogate's Courts and Estate & Trust Taxation. He is a former Section Delegate to the NYSBA House of Delegates, a former co-chair or chair of several Trusts & Estates Law Section committees, and as a member of the Trusts & Estates Law Section lobbied for three years in Albany for the passage of bills relevant to trusts and estates laws of New York State. Mr. MacLean writes and lectures regularly for NYSBA and other organizations on a wide range of trusts and estates topics. He can be reached at the law firm's White Plains, New York office at 914-600-8402 or ianwmaclean@mlfpc.com.

# MICHAEL E. O'CONNOR, ESQ.

Michael O'Connor is of counsel to Costello Cooney & Fearon PLLC in Syracuse. He graduated from State University of New York at Buffalo (B.A., 1970) and Syracuse University College of Law (JD, 1974). He is a fellow of the American College of Trust and Estate Counsel (ACTEC) and its past state chairman. He is a member of the New York State Bar Association and is past chair of its Trust & Estates Section. He has also acted as chairman of Elder Law Section, been a member of the House of Delegates, served as chairman of the Committee on Continuing Legal Education of the New York State Bar Association. He has been selected by Best Lawyers and Super Lawyers for many years and was recently selected Lawyer of the Year in Trusts and Estates. He is included in Who's Who in American Law and Who's Who in America.

He is currently an adjunct professor at Cornell University School of Law, teaching a workshop/course in Estate Planning. He has been an adjunct professor of taxation in the Syracuse University School of Law master's program. He has acted as chairman of state-wide New York State Bar Association continuing education programs for attorneys on contested estates and fiduciary income taxation. He has been moderator and lecturer on New York State Bar Association programs on will drafting, use of trusts in nursing home planning, estate settlement, valuation of business interests, estate problems in real property titles, business interests, fiduciary income tax, generation skipping tax, use of trusts and gifts in estate planning and numerous other topics.

Mr. O'Connor has spoken, moderated and written for programs sponsored by the New York Society of CPAs, Central New York CPA Club, National Business Institute, Estate Planning Council of CNY, Estate Planning Council of the Capital District and Association of Real Estate Appraisers. He has authored articles including "US Savings Bonds in the Estate," "Generation Skipping Tax-Questions and Answers for the Estate Planner" and "There's a Reason It's a POWER of Attorney" (New York State Bar Journal). He is a contributing author to Warrens Heaton on New York Estate Practice and has authored numerous statutory commentaries for LexisNexis Publishing. He is the author of a document assembly program for lawyers for Lexis Nexis and the New York State Bar Association.

As a member of the Onondaga County Bar Association, Mr. O'Connor has chaired its committee on estates and surrogates court and been a member of its board of directors. He is a member and past president of The Central New York Estate Planning Council. He is also a director of the Syracuse University Tax Institute. Additionally, he is past board chair of the Central New York Community Foundation and Aurora of CNY, Inc. Mr. O'Connor has participated in numerous community educational pro-

grams, TV and radio broadcast programs on estate planning issues as well as written for local publications on the subject.

### ROBERT S. REYNOLDS, ESQ.

Robert S. Reynolds is the Chair of the Estate Planning and Administration Practice Group and a partner in the Federal and State Taxation Practice Group of Whiteman Osterman & Hanna LLP in Albany, New York. Mr. Reynolds drafts estate planning documents including wills, trusts, retirement plan and insurance beneficiary designations, powers of attorney, health care proxies, and living wills, with a focus on income, gift, estate, and generation-skipping transfer taxes. He represents individual and corporate fiduciaries and family members in Surrogate's (probate) Court and supervises all aspects of estate and trust administration. He also represents taxpayers before the United States Tax Court, Internal Revenue Service and New York State Department of Taxation and Finance.

Mr. Reynolds is admitted to practice law in New York State and before the United States Tax Court and the United States District Court for the Northern District of New York. He is a member of the Albany County Bar Association and the New York State Bar Association (Trusts and Estates Section, Taxation Committee) and a Fellow of The New York Bar Foundation. Mr. Reynolds is active with the Community Foundation for the Greater Capital Region (Board Vice Chair, Finance Committee, and Chair of the Professional Advisors Council). He is a member, former Director, and Past President (2010-2011) of the Estate Planning Council of Eastern New York and a member of the Siena College Saints Alive! Advisory Council. Mr. Reynolds is a Director and Treasurer and former President (2016-2020) of the Bethlehem Basketball Club, a Director of the Bethlehem Girls Basketball Club, and has coached youth basketball, soccer, and baseball.

Mr. Reynolds received his Bachelor of Science in Finance degree from Siena College in 1993. He earned his Juris Doctor degree from Albany Law School in 1996 and his Master of Laws (LL.M.) in Taxation from Georgetown University Law Center while he was serving as an attorney advisor to the Hon. Daniel J. Dinan at the United States Tax Court in Washington, D.C.

# RICHARD M. STORTO, ESQ.

Richard M. Storto is a partner at Melvin & Melvin, PLLC. As head of the Melvin & Melvin trusts and estates department, he plans and administers estates, performs complementary business, tax, and real estate services, and litigates trust and estate matters, such as will contests, contested fiduciary accountings and abuse of fiduciary powers.

Mr. Storto has formed a trust company in Florida for Irving Bank Corporation, and served as counsel to the Trust Department of The Merchants National Bank & Trust Company of Syracuse and its successor, OnBank & Trust Co., advising it in all matters including litigation. He has also served as general counsel for Cicero Bank. In 2002, Mr. Storto was elected a Fellow of The American College of Trust and Estate Counsel.

## MARCELINE B. TEMPESTA, ESQ.

Marceline B. Tempesta is special counsel in the New York office of Milbank LLP and a member of the firm's Trusts & Estates Group. Ms. Tempesta's practice focuses on the representation of individuals and families with respect to complex estate planning (including gift, estate, generation-skipping transfer tax and philanthropic planning) and the representation of tax-exempt organizations. She advises individuals and their families with respect to a variety of domestic and international estate and charitable planning matters and represents owners of closely held business, hedge fund and private equity fund managers, and other wealthy individuals (both domestic and foreign). Her practice also includes the formation and representation of charitable trusts, public charities and private foundations, including with regard to compliance with state and federal tax laws and complex philanthropic joint ventures. Ms. Tempesta also has experience with premarital planning, estate litigation and estate administration.

Ms. Tempesta is a member of the New York City Bar Association, where she has served on the Trusts, Estates and Surrogate's Courts Committee and currently serves on the Non-Profit Organization Committee, and the American Bar Association, where she serves on the Exempt Organizations Committee. She graduated *cum laude* and with departmental honors from Northwestern University. She received a J.D. *cum laude* from Cornell University Law School, and while there she served as the university's judicial codes counselor and as articles editor of the *Cornell Law Review*.

# SHARON L. WICK, ESQ.

Sharon L. Wick is a partner at Phillips Lytle, LLP, where she is the Family Wealth Planning Practice Group leader and focuses on the areas of trust and estate administration, estate planning, estate and gift taxation and elder law. Areas of estate planning experience include wills, a variety

of trust vehicles and planning for retirement benefits. Ms. Wick is also experienced in a variety of charitable giving techniques. She is past Chair of the Trusts and Estates Law Section of the New York State Bar Association and a Fellow in the American College of Trust and Estate Counsel. In addition, Ms. Wick is a frequent presenter on trust and estate-related topics for a variety of audiences.

# DANIELLA WITTENBERG, ESQ.

Daniella Wittenberg is a partner at Greenfield Stein & Senior, LLP where her practice focuses on contested trust and estate matters, including trust litigation, construction proceedings and will contests. Prior to joining Greenfield Stein & Senior, Ms. Wittenberg was a Senior Associate in the Private Clients Service Group of Arnold & Porter Kaye Scholer, LLP, where her practice also included domestic estate and trust planning and administration. Ms. Wittenberg received her Juris Doctor from Harvard Law School.