

BASIC ESTATE PLANNING

PRACTICAL SKILLS SERIES

2019 Edition

Written by

Lisa M. Butler, Esq.

Pinto and Butler Skillman, New Jersey

and Updated and Revised by

Peter J. Bakarich Jr., Esq.

Winne Banta Basralian & Kahn, P.C. Hackensack, New Jersey

ABOUT THE AUTHORS

Lisa M. Butler is the owner of the law firm of Pinto & Butler, which specializes in estate planning, probate and estate administration, land preservation and residential real estate. The firm was established in 1972 and Butler has over 30 years of experience in these areas of the law. She is a member of the American, New Jersey, Pennsylvania and Somerset County bar associations as well as the Mercer County Estate Planning Council.

Peter J. Bakarich Jr. is a principal/partner in the law firm of Winne Banta Basralian & Kahn P.C. in Hackensack, where he practices in the areas of estate and trust planning and administration; international estate planning; probate; wills, living trusts, powers of attorney, advance directives/living wills; estate, inheritance and gift taxes; federal and state taxation; professional corporations; and pension and profit-sharing plans. Admitted to practice in New Jersey and New York, and before the United States Tax Court, he is a member of the American, New Jersey State, New York State, Passaic County and Bergen County bar associations. He has been president of the Estate Planning Council of Bergen County and the Greater New Jersey Estate Planning Council, and has been elected as a fellow of the American College of Trust and Estate Counsel (ACTEC).

©2019 New Jersey State Bar Association. All rights reserved. Any copying of material herein, in whole or in part, and by any means without written permission is prohibited. Requests for such permission should be sent to NJICLE, a division of the New Jersey State Bar Association, New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901-1520.

CONTENTS

| INTRODUCTION | 9 |
|---|----|
| CHAPTER 1 INITIAL INTERVIEW | 10 |
| INFORMATION GATHERING | 11 |
| REGISTRATION OF ASSETS | 12 |
| EXECUTORS, TRUSTEES AND GUARDIANS | 13 |
| EXECUTORS | 13 |
| TRUSTEES | 15 |
| GUARDIANS | 16 |
| DISCUSSION OF TAX CONSEQUENCES | 16 |
| FEDERAL ESTATE TAX | 17 |
| NEW JERSEY ESTATE TAX | 20 |
| NEW JERSEY INHERITANCE TAX | 23 |
| ENGAGEMENT LETTER | 25 |
| SAMPLE ENGAGEMENT LETTER WITH PRIVACY STATEMENT | 26 |
| CHAPTER 2 | |
| ESTATE PLAN SUMMARY | 31 |
| GENERAL CONSIDERATIONS | 32 |
| OUTRIGHT DISTRIBUTION WILL | 33 |

| DISCLAIMER TRUST WILL | 36 |
|---|----|
| OUTRIGHT DISTRIBUTION APPROACH | 37 |
| DISCLAIMER TRUST WILL APPROACH | 39 |
| SAMPLE LETTER AND ESTATE PLAN SUMMARY FOR DISCLAIMER TRUST WILLS | 43 |
| ESTATE PLAN SUMMARY UTILIZING RECIPROCAL DISCLAIMER TRUST WILLS | 44 |
| POWERS OF ATTORNEY | 47 |
| MARITAL DEDUCTION WILL | 51 |
| OUTRIGHT DISTRIBUTION APPROACH | 51 |
| MARITAL DEDUCTION WILL APPROACH | 53 |
| QTIP TRUSTS | 54 |
| SAMPLE LETTER AND ESTATE PLAN SUMMARY FOR RECIPROCAL MARITAL DEDUCTION WILL | 57 |
| ESTATE PLAN SUMMARY UTILIZING RECIPROCAL MARITAL DEDUCTION WILLS | 58 |
| MECHANICS OF ESTABLISHING A TRUST UNDER A WILL | 65 |
| THE SINGLE CLIENT | 66 |
| SPECIAL NEEDS TRUST | 66 |
| REVOCABLE LIVING TRUST | 67 |
| OTHER ESTATE TAX PLANNING TECHNIQUES | 68 |
| OTHER ESTATE DI ANNINO DOCLIMENTS | 75 |

CHAPTER 3

| DRAFTING DOCUMENTS | 81 | |
|--|----|--|
| DRAFTING THE WILL | 82 | |
| CLAUSES | 82 | |
| TESTATOR CLAUSE/EXORDIUM CLAUSE | 82 | |
| PAYMENT OF DEBTS CLAUSE | 83 | |
| PAYMENT OF TAXES CLAUSE | 83 | |
| DISPOSITION OF TANGIBLE PERSONAL PROPERTY CLAUSE | 84 | |
| MEMORANDUM CLAUSE | 85 | |
| BEQUEST CLAUSE | 86 | |
| CHARITABLE BEQUESTS CLAUSE | 87 | |
| DISTRIBUTION OF REAL PROPERTY CLAUSE | 87 | |
| RESIDUARY CLAUSE | 88 | |
| TOTAL DISASTER CLAUSE | 88 | |
| FIDUCIARIES | 89 | |
| POWERS CLAUSE | 89 | |
| TESTIMONIUM CLAUSE | 92 | |
| SELF-PROVING WILLS | 93 | |
| ACKNOWLEDGMENT AND AFFIDAVIT RELATING TO EXECUTION OF WILL | 94 | |
| CHAPTER 4 | | |
| EXECUTION AND FINAL MEETING | 95 | |
| EXECUTION OF THE WILL | 96 | |
| RETENTION OF THE WILL | 96 | |
| CONTINUING RESPONSIBILITY TO THE CLIENT | 96 | |

| REVIEWING THE WILL | 97 |
|---|-----|
| LETTER OF INSTRUCTION | 97 |
| SAMPLE LETTER OF INSTRUCTION | 99 |
| SAMPLE CODICILS | 100 |
| APPENDIX A | 103 |
| FINANCIAL PLANNING WORKFORM | 104 |
| PROPERTY LIST | 106 |
| CONSIDERATIONS WHEN MAKING OR REVISING A WILL | 110 |
| LETTER OF INSTRUCTION TO HEIRS | 112 |
| APPENDIX B | 115 |
| OUTRIGHT DISTRIBUTION WILL WITH CONTINGENT TRUST FOR DESCENDANTS UNDER AGE X* | 116 |
| DISCLAIMER TRUST WILL OUTRIGHT TO SPOUSE WITH TRUST FOR CHILDREN AND COMMON DISASTER PROVISIONS* | 132 |
| POUR OVER WILL TO REVOCABLE TRUST | 160 |
| SAMPLE WILL CLAUSES | 174 |
| ENTIRE ESTATE IN TRUST FOR SPOUSE | 184 |
| QTIP MARITAL DEDUCTION PECUNIARY FORMULA WILL SEPARATE TRUST FOR NJ ESTATE TAX EXEMPTION AND MARITAL (QTIP) AND GENERATION-SKIPPING TRUSTS (GST) FOR OTHER ASSETS* | 208 |
| FORM FOR DISPOSING OF TANGIBLE PERSONAL PROPERTY | 239 |
| FORM FOR DISPOSING OF TANGIBLE PERSONAL PROPERTY | 240 |

| NEW JERSEY ESTATE TAX PLANNING-I-A | 241 |
|---|-----|
| NEW JERSEY ESTATE TAX PLANNING-I-B | 242 |
| NEW JERSEY ESTATE TAX PLANNING-II-A | 243 |
| NEW JERSEY ESTATE TAX PLANNING-II-B | 244 |
| | |
| APPENDIX C | 245 |
| DURABLE POWER OF ATTORNEY* | 246 |
| "LIVING WILL"* | 250 |
| HEALTH CARE PROXY DIRECTIVE | 253 |
| INSTRUMENT OF ANATOMICAL GIFT ¹ | 257 |
| REVOCABLE LIVING TRUST* | 259 |
| IRREVOCABLE LIFE INSURANCE TRUST FOR SINGLE LIFE POLICIES* | 291 |
| IRREVOCABLE LIFE INSURANCE TRUST FOR JOINT AND SURVIVOR (LAST TO DIE) POLICIES | 326 |
| SAMPLE NOTICE LETTER TO BE USED WITH IRREVOCABLE INSURANCE TRUSTS | 355 |
| DOCUMENTS AND DEFINITIONS | 356 |