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**The American Law Institute Completes the
Restatement (Third) of Property: Wills and Other Donative Transfers**

PHILADELPHIA, December 1, 2011 — [The American Law Institute](http://www.ali.org) (ALI), the leading independent organization in the United States producing scholarly work to clarify, modernize, and improve the law, today announced that it has published the third and final volume of its [Restatement \(Third\) of Property: Wills and Other Donative Transfers](#). The publication completes a 20-year project to update the law of wills and succession. The latest volume provides a comprehensive and detailed account of the rules governing class gifts, powers of appointment, future interests, and perpetuities.

The 757-page hardbound text, product code 1R3WDTV3OT, costs \$131. To order, visit the Publications section of www.ali.org or call the ALI Customer Service Department at 1-800-253-6397. Volumes 1 and 2 also are available for purchase.

Among the highlights of the new volume are provisions modernizing and simplifying the law of future interests. The class-gift rules respond to legal problems that have arisen from recent scientific breakthroughs in reproductive technology, resolving the succession implications of posthumous conception, surrogate motherhood, and sperm and egg donations. The work provides a comprehensive treatment of the rules governing powers of appointment and concludes with a simplified formulation of the rule against perpetuities. The Restatement supplies a strongly principled explanation of the reasons for limiting dead-hand control of property.

Earlier volumes of this Restatement were published in 1999 and 2003. Those volumes cover intestate distribution, the execution and revocation of wills, and post-execution events affecting the meaning of wills, such as ademption, lapse, and antilapse. The Restatement provides unified treatment of probate and nonprobate transfers, including the construction, reformation, and modification of wills and other donative documents.

Like other Restatements, the Property Restatement aims to organize and explain the principles of the field, sometimes identifying and confirming changes in the law. Among the innovations endorsed in the Restatement are rules excusing harmless errors in compliance with the formal requirements for wills and gifts and permitting a court to reform the text of a will or other donative document in a case of mistake, as when a drafter or typist accidentally deletes or misrenders an intended term.

DEDICATED TO CLARIFYING AND IMPROVING THE LAW

The Reporters who drafted this Restatement are [Professor Lawrence W. Waggoner](#) of the University of Michigan Law School, and [Professor John H. Langbein](#) of Yale Law School. In the usual Institute process, the Reporters received constructive criticism for more than two decades from [Advisers](#) to the project and from an [ALI Members Consultative Group](#). After revisions the drafts were approved by the ALI Council and the ALI membership at its annual meetings.

The Property Restatement was prepared in close coordination with the [Restatement \(Third\) of Trusts](#), which will conclude with its fourth and final volume in 2012; earlier volumes were published in 2003 and 2007. The Trusts Restatement deals with the validity, enforcement, and administration of trusts, including the fiduciary duties of trustees. The Property Restatement, although centered on the law of wills and will substitutes, covers the principles of construction applicable to dispositive provisions in donative instruments of all sorts, including trusts.

Both Restatements are important and authoritative resources for trust and estate lawyers, not only when preparing to argue cases at trial and appellate levels, but also in the work of drafting and interpreting dispositive provisions in wills, trusts, and other donative documents. Each Restatement section is followed by a set of Comments explaining and illustrating the governing rule and by a Reporters' Note collecting relevant cases, statutes, and secondary sources. The early volumes of both Restatements have already influenced decisional law, and there is every reason to expect that the concluding volumes will be equally authoritative.

Following are some instances of judicial reliance in reported cases upon provisions contained in parts of the Property Restatement previously released:

- “We adopt the view of the American Law Institute on this issue.” *Sieh v. Sieh*, 713 N.W.2d 194, 198 (Iowa 2006) (adopting the Restatement position that a revocable trust created before the marriage is subject to the forced share of the surviving spouse, even when the forced share statute refers only to the probate estate).
- “In sum, we agree with [the Restatement].” *Ruotolo v. Tietjen*, 890 A.2d 166, 177 (Conn. App. Ct. 2006), *aff'd per curiam*, 916 A.2d 1 (Conn. 2007) (adopting the Restatement position that mere survival language does not trump an antilapse statute).
- “We adopt the *Restatement* view on this subject.” *Carlson v. Sweeney, Dabagia, Donoghue, Thorne, Janes & Pagos*, 895 N.E.2d 1191, 1200 (Ind. 2008) (adopting, in a tax reformation case, the Restatement position that a mistake of law as well as of fact can be the basis for reforming a provision in a testamentary trust).
- “We agree with [the Restatement] and [other] authorities that the latent/patent distinction ... no longer serves any useful purpose.” *University of Southern Indiana Foundation v. Baker*, 843 N.E.2d 528, 535 (Ind. 2006) (abandoning the distinction between types of ambiguity in construing instruments).
- “The rationale of the Restatement ... should be applied here.” *In re Martin B.*, 17 Misc.3d 198, 204, 841 N.Y.S.2d 207 (Sur. Ct. 2007) (terms “issue” and “descendants” in trusts

included children conceived posthumously by means of in vitro fertilization with cryopreserved semen of grantor's son).

- “[I]t seems logical to this court to choose the path ... recommended by the *Restatement*” Estate of Herceg, 193 Misc.2d 201, 205, 747 N.Y.S.2d 901 (Sur. Ct. 2002) (adopting the Restatement position that a will can be reformed on the ground of mistake).

- “We follow the *Restatement* ... on this point, for the reasons explained.” *In re* Estate of Beauregard, 921 N.E.2d 954, 958 n.5 (Mass 2010) (adopting the Restatement position that preponderance of the evidence, not clear and convincing evidence, is the proper standard of proof for rebutting the presumption that a lost will that is traced to the testator's possession was revoked by act).

About The American Law Institute

[The American Law Institute](#) is the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law. The Institute (made up of over 4300 lawyers, judges, and law professors of the highest qualifications) drafts, discusses, revises, and publishes Restatements of the Law, model statutes, and principles of law that are enormously influential in the courts and legislatures, as well as in legal scholarship and education. ALI has long been influential internationally and, in recent years, more of its work has become international in scope.