

# INSTRUCTIONS FOR A WILL

## **Wills Generally:**

Do you need a will? Will I lose all of my property if I do not have one? Will the State take my children if I do not have a will? If I make a will, will I avoid probate and avoid an attorney taking all of my estate? Generally the answer to all of these questions is no.

In a straight forward situation, generally all states provide through statute that should one spouse die, all property will belong to the surviving spouse. Should both spouses die, all property will go equally to all of the children. The State will not take your children, it has plenty of other things to do. Normally, relatives have first priority to your children. Finally, wills do not avoid probate, they merely tell the Personal Representative how to handle your estate.

Then, why have a will?

First: In a will, you, not the State, are able to say how you want your estate handled. Even if your desires are exactly the same way that the State statute provides, I would rather have the say than have the State tell me.

Second: It is a way to specify by whom you want your children to be cared for, should that be the situation. If you do not have a will, then generally any relative may ask for the watchcare, and it may not be the one you would have preferred.

Third: It is a way to make other special provisions, such as being buried on your field of service, simple trust provisions for your children, and special gifts you want to go to particular people or charities.

## **Who May Make A Will:**

Any person of sound mind and who has attained the age of 18 may make a will. A person is presumed to be competent if he or she knows what his property consists of, his or her relatives, and what disposition he or she desires to make.

## **Requisites Of A Will:**

Every will, generally, must be in writing, signed by the maker or by some person under his direction in his presence, witnessed by two or more competent witnesses in the presence of the maker. It is better that these witnesses not be family members or ones that may be recipients under the will. There are a few States that allow handwritten (holographic) and oral (nuncupative) wills. These are the exception to the rule and it is best to follow the general requirements above.

It is a general misconception that a will must be executed in the State in which you die. This is not the case. The general rule is that if the will was validly executed in the State in which it was written, all other States will recognize it as valid.

It is not necessary that a will be recorded, and I generally recommend that it not be. Should this issue be raised, it would be best to consult an attorney and explain the particular facts that may give rise to the need of recording.

## **Revocation Of A Will:**

A will can be revoked or canceled by:

Writing a new will.

Burning or destroying the old will.

## **Forms Provided:**

The forms that are provided are very simple and straight forward. My general rule is that if the provided form does not say what you want it to say, do not use it. If your situation is one that there is not a large estate (i.e., in the area of \$400,000 to \$600,000 dollars in jointly held property), and no special needs of children or other heirs, then these forms could be helpful. Once you get into larger dollars and special needs for your children or yourself, it would be good to talk to an attorney to make sure all of your needs are being met by the will. It may be that something more than a will is needed.

# **LAST WILL AND TESTAMENT OF**

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I, \_\_\_\_\_ of \_\_\_\_\_, State of \_\_\_\_\_, realizing the uncertainty of this life, and with full confidence and trust in our Lord and Savior, Jesus Christ, in His death for my sins on the cross and in His shed blood as an atonement for my soul, and knowing that by faith in His sacrifice on the cross for me I have eternal life, being over the age of eighteen years, and being of sound and disposing mind and memory and not acting under any fraud, menace, duress, or undue influence of any person or persons whomsoever, do hereby revoke any and all other Wills, Codicils and writings of a testamentary character by me at any time heretofore made. I further do make, publish, and declare this to be my Last Will and Testament, made with the intent to dispose of all the property which at my death I own or have any right, title or interest in, which is devisable or capable of transfer by Will in the following manner.

**FIRST:**

I am

- not married,
- married, to \_\_\_\_\_
- widow/ed
- that no children have been born as issue of me, nor have I ever adopted any children.
- that I have \_\_\_\_\_ children at the time of the execution of this Will: namely,  
\_\_\_\_\_, whose date of birth is \_\_\_\_\_,  
\_\_\_\_\_, whose date of birth is \_\_\_\_\_,  
\_\_\_\_\_, whose date of birth is \_\_\_\_\_,  
\_\_\_\_\_, whose date of birth is \_\_\_\_\_,

I further declare that there are no children of deceased children. The term "children" as hereafter used shall refer to the above named children and all children at any time hereafter born to or legally adopted by my spouse and me during our marriage.

**SECOND:**

I hereby declare that all legal obligations of my estate shall be paid out of the residue of my estate, provided however, this direction shall not authorize any creditor to require payment of any debt or obligation prior to its normal maturity. Legal obligations as used in this paragraph shall mean all lawful debts outstanding at the time of my death, and shall also include funeral expenses and all estate and inheritance taxes assessed in any way by reason of my death, whether on property passing under my Will or otherwise. As to the estate and inheritance taxes assessed against my estate on the property passing under my Will, and as to all inheritance taxes due by reason of my death, I direct my Personal Representative not to seek reimbursement from any recipient of any such taxes.

**THIRD:**

I hereby give, devise, and bequeath all of the rest, residue, and remainder of my estate, real, personal, and mixed, and wheresoever situate, which is or may be subject to my testamentary disposition at the time of my death, in the following manner,

- Unto: my spouse
- Unto: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Initials \_\_\_\_\_

Unto: my above named children, share and share alike, per stirpes, in the event that my beloved spouse predeceases me or should we die in a common disaster or as a proximate result of injuries suffered in a common disaster, or should my beloved spouse die within sixty days from the date of my death.

I further hereby give all my personal and household effects, such as jewelry, clothing, furniture, furnishings, sporting equipment, silver, books, pictures, and automobiles, together with any insurance policies or the proceeds of such policies, if any, on such property, in accordance with a memorandum which I intend to leave at my death. If for any reason no such memorandum is in existence at my death or if any such memorandum fails to dispose of all of such property effectively, I give such property, or the portion of it not effectively disposed of, to those indicated above who survive me in shares of substantially equal value to be divided between them as they shall agree.

FOURTH:

In the event that my beloved spouse predeceases me or should we die in a common disaster or as a proximate result of injuries suffered in a common disaster, or should my spouse die within sixty days from the date of my death, and in the event that there are any of my children are under the age of (\_\_\_\_\_) years, known here as "trust age," then it is my will and I hereby give, devise and bequeath all of the rest, residue and remainder of my estate, of whatsoever kind and description and wheresoever situate, which is subject to my testamentary disposition, unto \_\_\_\_\_ in trust as Trustee for the children named above, or any other child or children born to or adopted by me, until such time as

- the youngest child attains the "trust age,"
- as each child attains the "trust age"

at which time the Trust shall terminate as to that child and all principal and interest shall then be distributed to that child, per stirpes.

In the event of the death of the Trustee, or in the event that the Trustee cannot or will not serve as such, then I nominate, constitute and appoint \_\_\_\_\_ to be and to act as Trustee with the same powers and rights given to my Trustee first above named.

The Trustee shall hold, manage and control the property comprising the trust estate, collect the income therefrom and out of the same, shall hold the same for the benefit of said child or children.

1. The Trustee shall invest my estate in such manner as to realize the best income therefrom in the most prudent and reasonable way, at his or her discretion, with authorization to convert, buy, sell, liquidate, exchange, transfer or invade, any part of the corpus, subject to the law that may apply. The Trustee shall have but not be limited to the further powers enumerated as follows:

- a. To invest and reinvest in or exchange assets for any securities and properties he or she deems advisable, to collect, receive, and receipt for any principal or income, and to exercise all rights incidental to the ownership of any stocks, bonds or other properties of the Trust estate.
- b. To make division or distribution, whenever required in whole or in part, in monies, securities, or other property, and in such division or distribution the judgment of the Trustee concerning the propriety thereof and the evaluation of the property and securities concerned, shall be binding and conclusive on all persons and interests.
- c. To sell all or any part of the property, of whatever kind, and at any time, without any notice or bond upon such terms for cash or credit and at such price, either at public or private sale as said Trustee shall deem advisable and proper, and to execute good and sufficient deeds and bills of sale therefor, and he or she shall have the power and authority to lease any and all properties held in said Trust and fix the duration of any such lease.
- d. To compromise, settle, arbitrate or defend any claim or demand in favor of or against said Trust. To enforce any note, mortgage or other obligation or lien held here-under and to enter upon such contracts and agreements to make such compromise or settlement of debts, claims, or controversy, as my said Trustee may deem advisable.

Initials \_\_\_\_\_

2. The Trustee shall pay to the Guardian of the person of my child or children, the income from the corpus of said trust in amounts sufficient in the Guardian's discretion for payment of necessary support, education, health and welfare of said child or children. Any income not so distributed shall be accumulated and added to the principal.

3. The Trustee may, at the Trustee's discretion, invade the corpus of the trust at any time the Trustee deems it necessary to see to the overall health, welfare, and education of said child or children.

4. In the event this Trust is administered under the laws of any state which does not require an annual accounting to a court of jurisdiction, the Trustee shall account at least annually to the Guardian of the person of said child or children.

5. Benefits for children over "trust age":

If, at any time, the Trustee, in his or her judgment, after taking into consideration all other resources, if any, which may then be known to the Trustee to be available for each child, deems any child over "trust age" to be in need of maintenance, support and education, the Trustee, in using his or her discretion, may pay to or use for the benefit of such child so much of the Trust Estate then remaining as the Trustee deems advisable for such needs, primary consideration being given to the probable requirements for maintenance, support and education of each child under "trust age." All payments hereunder to or for the benefit of any child over "trust age" shall, upon division of the Trust Estate into shares, be treated as an advancement against such child's distributive share.

6. Division into shares and distribution:

Upon said event, if all my children then living have then attained "trust age" or be all then deceased, or otherwise as soon after said event as all my children continuing to live either attain "trust age" or sooner die, the Trustee shall, subject to the adjustment for all advancements, if any, as provided in the preceding paragraphs, distribute the Trust Estate in equal shares, one share to each then living child of mine, and one share, by right of representation, to the then living descendants of each deceased child of mine.

7. In the event that any other child or children are hereafter born to or adopted by me, then it is my specific desire that provisions of the Trust shall apply to all of my children equally, with the same provisions and conditions, and that my estate be distributed to all my children equally.

FIFTH:

In the event that my spouse predeceases me or should my spouse and I die in a common disaster or as a proximate result of injuries suffered in a common disaster, or should my spouse die within sixty days from the date of my death, and in the event that any of my children be minors according to the laws of the State of \_\_\_\_\_, then I hereby nominate, constitute, and appoint \_\_\_\_\_ to be and to act as Guardian of the persons of my minor children. In the event of the death of the Guardian, or in the event that the Guardian cannot or will not serve as such, then I nominate, constitute, and appoint \_\_\_\_\_ to be and to act as Guardian with the same powers and rights given to the Guardian first above named.

SIXTH:

I hereby nominate, constitute, and appoint my beloved spouse to be and to act as Personal Representative of this my Last Will and Testament, and I direct that the Personal Representative shall not be required to give bond or undertaking for the purpose of qualifying as Personal Representative, and I further direct that the Personal Representative shall settle my estate without the intervention of any Court, except probating of my Will. In the event of the death of my Personal Representative, or in the event that the Personal Representative cannot or will not serve as such, then I nominate, constitute, and appoint \_\_\_\_\_ with the same powers and rights given to my Personal Representative first above named. My Personal Representative named herein shall have the power to sell, encumber, or convey, without notice or confirmation, any of the assets of my estate, real, personal and mixed, at such prices and terms as to the Personal Representative may seem just, whether or not such acts are necessary in the administration of my estate, and to do any other acts which the Personal Representative may deem necessary or advisable in the administration of my estate.

SEVENTH:  Yes  No

I hereby direct that should I die in a foreign country, that upon my death my remains be buried in that foreign country to avoid the expense of shipping my remains to my homeland for burial.

Initials \_\_\_\_\_

EIGHTH:  Yes  No

If any person who is or claims under or through a devisee, legatee, or beneficiary of this Will, or any person who, if I die testate, who would be entitled to share my estate, shall in any manner whatsoever, directly or indirectly, contest this Will or attack, conspire, or cooperate with anyone attempting to do any of the actions or things aforesaid, or should prove himself or herself to be an heir of mine or to be in any way entitled to any of my property or estate, who is otherwise omitted from this Will, then I hereby bequeath such person the sum of \$1.00 only.

NINTH: If a court of competent jurisdiction rules invalid or unenforceable any of the provisions hereof, each such provision shall be disregarded, but the remainder of this instrument shall be given full force and effect. All questions pertaining to the validity, interpretation, construction, and administration of this instrument shall be determined in accordance with the laws of the State of \_\_\_\_\_.

IN WITNESS WHEREOF, I, \_\_\_\_\_, have hereunto set my hand and seal at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

On the date last above written, \_\_\_\_\_ declared to us, the undersigned, that the foregoing instrument, consisting of \_\_\_\_ (#) pages, including the page signed by us as witnesses, was his/her Last Will and Testament, and requested us to act as witnesses to it. He/she thereupon signed this Will in our presence, all of us being present at the same time. We now at his/her request, in his/her presence and in the presence of each other, subscribe our names as witnesses.

\_\_\_\_\_  
(Witness)  
of \_\_\_\_\_

\_\_\_\_\_  
(Witness)  
of \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

Each of the undersigned being first duly sworn, on oath states that on this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_:

1. I am of legal age and competent to be a witness to the Will of \_\_\_\_\_,  
the Testator/Testatrix.
2. The Testator/Testatrix, in my presence and in the presence of the other witness, whose signature appears  
below,
  - A. Declared the foregoing instrument, consisting of \_\_\_\_ pages to be his/her Will;
  - B. Requested that I and the other witness act as witnesses to his/her Will and make this affidavit; and
  - C. Signed such instrument at \_\_\_\_\_.
3. I believe the Testator/Testatrix to be of sound mind, and that in so declaring and signing, he/she was not  
acting under any duress, menace, fraud or undue influence.
4. The other witness and I in the presence of the Testator/Testatrix and each other, now affix our signatures  
as witnesses to the Will and make this Affidavit.

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Witness)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to  
administer oaths and take acknowledgments, personally appeared \_\_\_\_\_ and  
\_\_\_\_\_ who are personally known to be or who has produced  
\_\_\_\_\_ as identification and who did take an oath and who acknowledged before me  
that they executed the same for the purposes stated therein.

WITNESS my hand and official seal in the State and County last aforesaid this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

Printed name of Notary:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public  
State of \_\_\_\_\_