

**LAST WILL AND TESTAMENT  
OF**

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I, \_\_\_\_\_, of (City) \_\_\_\_\_,  
(State) \_\_\_\_\_, revoke my former Wills and Codicils and declare this to be my  
Last Will and Testament.

**ARTICLE I  
IDENTIFICATION OF FAMILY**

I am married to \_\_\_\_\_ and all references in this Will to "my  
spouse" are references to \_\_\_\_\_.

The names of my children from my prior marriage are  
\_\_\_\_\_. All references in this Will to "my children from  
my prior marriage" are references to the above-named children.

The names of my children from my current marriage are  
\_\_\_\_\_. All references in this Will to "my children of my  
current marriage" are references to the above-named children and any children born to me or  
adopted by me after the signing of this Will.

**ARTICLE II  
PAYMENT OF DEBTS AND EXPENSES**

I direct that my just debts, funeral expenses and expenses of last illness be first paid from my  
estate.

**ARTICLE III  
DISPOSITION OF PROPERTY**

A. Specific Bequests. I direct that the following specific bequests be made from my estate.

1. \_\_\_\_\_ shall be distributed to  
\_\_\_\_\_. If this beneficiary does not survive me, this  
bequest shall be distributed with my residuary estate.

B. Residuary Estate. I direct that my residuary estate be distributed to the following  
beneficiaries in the percentages as shown:

\_\_\_\_\_ % - my spouse, \_\_\_\_\_.

\_\_\_\_\_ % - my children from my prior marriage in equal shares. If a child of mine from my prior marriage does not survive me, such deceased child's share shall be distributed in equal shares to the children of such deceased child who survive me by right of representation. If a child of mine from my prior marriage does not survive me and has no children who survive me, such deceased child's share shall be distributed in equal shares to my other children from my prior marriage, if any, or to their respective children by right of representation.

\_\_\_\_\_ % - my children from my current marriage in equal shares. If a child of mine from my current marriage does not survive me, such deceased child's share shall be distributed in equal shares to the children of such deceased child who survive me by right of representation. If a child of mine from my current marriage does not survive me and has no children who survive me, such deceased child's share shall be distributed in equal shares to my other children from my current marriage, if any, or to their respective children by right of representation.

100% - *Percent Total*

The share of any such beneficiary or class who does not survive me shall be distributed proportionately to the other beneficiary or class(es) listed under this provision.

If none of the previously named beneficiaries survive me, my residuary estate shall be distributed to my heirs-at-law, their identities and respective shares to be determined under the laws of the State of California, then in effect, relating to the succession of separate property that is not attributable to a predeceased spouse, as if I had died intestate at the time fixed for distribution under this provision.

**ARTICLE IV  
NOMINATION OF EXECUTOR**

I nominate \_\_\_\_\_, of (City) \_\_\_\_\_,  
(State) \_\_\_\_\_, and \_\_\_\_\_, of  
(City) \_\_\_\_\_, (State) \_\_\_\_\_, as Co-Executors  
(the "Executor"), without bond or security. If one of the above nominees does not serve for any reason, the remaining nominee shall serve as sole Executor without bond or security.

**ARTICLE V  
EXECUTOR POWERS**

My Executor, in addition to other powers and authority granted by law or necessary or appropriate for proper administration, shall have the right and power to lease, sell, mortgage, or otherwise encumber any real or personal property that may be included in my estate, without order of court and without notice to anyone.

My Executor shall have the right to administer my estate using "informal", "unsupervised", or "independent" probate or equivalent legislation designed to operate without unnecessary intervention by the probate court.

**ARTICLE VI  
MISCELLANEOUS PROVISIONS**

A. Paragraph Titles and Gender. The titles given to the paragraphs of this Will are inserted for reference purposes only and are not to be considered as forming a part of this Will in interpreting its provisions. All words used in this Will in any gender shall extend to and include all genders, and any singular words shall include the plural expression, and vice versa, specifically including "child" and "children", when the context or facts so require, and any pronouns shall be taken to refer to the person or persons intended regardless of gender or number.

B. Thirty Day Survival Requirement. For the purposes of determining the appropriate distributions under this Will, no person or organization shall be deemed to have survived me unless such person or entity is also surviving on the thirtieth day after the date of my death.

C. Common Disaster. If my spouse and I die under circumstances such that there is no clear or convincing evidence as to the order of our deaths, or if it is difficult or impractical to determine which person survived the death of the other person, it shall, for the purpose of distribution of my life insurance, property passing under any Trust or other contracts, if any, and property passing under this Will, be conclusively presumed that I survived the death of my spouse.

D. Liability of Fiduciary. No fiduciary who is a natural person shall, in the absence of fraudulent conduct or bad faith, be liable individually to any beneficiary of my estate, and my estate shall indemnify such natural person from any and all claims or expenses in connection with or arising out of that fiduciary's good faith actions or nonactions as the fiduciary, except for such actions or nonactions which constitute fraudulent conduct or bad faith.

E. Beneficiary Disputes. If any bequest requires that the bequest be distributed between or among two or more beneficiaries, the specific items of property comprising the respective shares shall be determined by such beneficiaries if they can agree, and if not, by my Executor.

IN WITNESS WHEREOF, I have subscribed my name below, this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

Testator Signature: \_\_\_\_\_  
\_\_\_\_\_

We, the undersigned, hereby certify that the above instrument, which consists of \_\_\_\_\_ pages, including the page(s) which contain the witness signatures, was signed in our sight and presence by \_\_\_\_\_ (the "Testator"), who declared this instrument to be his/her Last Will and Testament and we, at the Testator's request and in the Testator's sight and presence, and in the sight and presence of each other, do hereby subscribe our names as witnesses on the date shown above.

Witness Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_

Witness Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_

**AFFIDAVIT**

I, \_\_\_\_\_, the Testator, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Will and that I sign it willingly, in the presence of the undersigned witnesses, that I execute it as my free and voluntary act for the purposes expressed in the Will, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator Signature: \_\_\_\_\_  
\_\_\_\_\_

We, \_\_\_\_\_ and \_\_\_\_\_ the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as the Testator's will and that the Testator signs it willingly in our presence, and that the Testator executes it as the Testator's free and voluntary act for the purposes expressed in the will, and that each of us, in the presence and hearing of the Testator, at the Testator's request, and in the presence of each other, hereby signs this will, on the date of the instrument, as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind and memory, and under no constraint or undue influence, and the witnesses are of adult age and otherwise competent to be witnesses.

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_

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

Subscribed, sworn to and acknowledged before me by  
\_\_\_\_\_, the Testator; and subscribed and sworn to before me  
by \_\_\_\_\_ and \_\_\_\_\_  
witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary public or other officer  
Authorized to take and certify  
Acknowledgments and administer oaths

## Final Checklist for Will - Remarried with Adult Children

Willmaker: \_\_\_\_\_

Date \_\_\_\_\_

### Make It Legal

\_\_\_\_\_ This Will is not valid unless it is signed by a Willmaker who is of "sound mind" and of the minimum age or older for this state. In most states, the minimum age is 18. Some states permit an individual below the minimum age to sign a will if the person is married or in the military. Being of "sound mind" requires that the Willmaker: (a) know that he or she is signing a will, (b) know the general nature and extent of his or her property, and (c) know the descendants or other relatives that would ordinarily be expected to share in the estate.

\_\_\_\_\_ The Will should be signed by \_\_\_\_\_ in the presence of three DISINTERESTED adult witnesses and a notary public. Many states require only two witnesses, but the signature of a third witness provides some protection against the possibility that one of the witness' signature will be invalid for some reason. For example, a person should not be a witness if that person is a beneficiary under the Will. In most states, if a beneficiary's signature is counted in order to satisfy the minimum number of witnesses, then the Will is not necessarily invalidated, but that "interested witness" may not receive a share of the estate any larger than if the Willmaker had died without a will.

\_\_\_\_\_ All of the witnesses must watch \_\_\_\_\_ sign this Will. \_\_\_\_\_ should verbally declare that the document is intended to be his or her Last Will and Testament, but the witnesses need not read the Will or know of its contents.

\_\_\_\_\_ Each witness must sign his or her name with the Willmaker and the other witnesses present. The witnesses should be satisfied that the Willmaker willingly signed the document as his or her free and voluntary act, and that the Willmaker was of full age and sound mind.

\_\_\_\_\_ \_\_\_\_\_ should initial on the bottom margin of each page of the Will. This is done to prevent the subsequent substitution of pages. To print out a line for initials at the bottom of each page of your document, choose "Preferences" from the "View" menu, click on the "Print" tab and mark the appropriate checkbox

\_\_\_\_\_ The date should be filled in wherever requested, using the date on which the actual signing takes place. This step could become essential to the validity of the Will (for example, if this Will revokes an earlier Will).

\_\_\_\_\_ The number of total pages in the Will should be indicated, including the page(s) on which the witness signature lines appear. The page with the affidavit, if included, should not

be counted because the affidavit is not a part of the Will itself.

### **Attachments**

\_\_\_\_\_ The self-proving affidavit ("Proof of Will" in some states) is a document which should be signed and attached to the end of the Will, and which contains the Willmaker's acknowledgment and the affidavit of the witnesses, made before a person authorized to take acknowledgments and administer oaths. The affidavit recites that the requisite formalities were observed in signing the Will.

Although attaching the affidavit has nothing to do with the legality of the Will itself, it can speed the admission of the Will to probate after the death of the Willmaker because it eliminates the need to have a witness appear at the probate proceeding to testify that the formalities in signing the Will were followed. The witnesses may not be available later when they are needed. A self-proved Will may be admitted to probate without additional witnesses or affidavits, but it is still subject to contest on such grounds as undue influence, lack of testamentary capacity, or prior revocation.

Some states do not recognize the self-proving option. Therefore, the affidavit will be of no use in those states. However, including the affidavit in those states will not invalidate the Will.

### **Copies**

- \* The original of the Will should be kept in a secure location such as a safe deposit box at a bank, because only the signed original can be probated. A copy could be kept in the Willmaker's home files.
- \* The Willmaker may wish to provide a copy to his or her lawyer, or possibly to the person named as Executor. However, before distributing such copies, the Willmaker should consider that it may become awkward to retrieve them later, should the Willmaker decide to modify the Will and/or change the designation of Executor.

### **When to Consult a Lawyer**

- \* If the Willmaker is unable to sign due to physical disability, another person may be able to sign on behalf of the Willmaker, in the Willmaker's presence, and at the express direction of the Willmaker. However, this document does not provide the necessary language for another person to sign for the Willmaker. For assistance with this procedure, a lawyer should be contacted.

### **Other Information**

- \* This Will does not dispose of property which passes on the death of the Willmaker to a person by operation of law or by any contract. For example, the Will does not dispose of joint tenancy assets or the Willmaker's spouse's share of community property, and it does not

normally apply to proceeds of life insurance on the Willmaker's life or to his or her retirement plan benefits

- \* This Will is not designed to reduce taxes. The tax results of the choices made in this Will should be discussed with a competent tax advisor.
- \* In most states, the Will cannot be changed by adding, deleting, or modifying words on the face of the Will. Such changes are usually disregarded. When changes are desired, it is recommended that the Will be revoked by signing a new Will which expressly revokes the former Will. For example, if the Willmaker marries or divorces after the Will is signed, he or she should make and sign a new will.

### **Reasons to Update**

- \* A change in marital status.
- \* The birth or adoption of children. A new will with provisions for minor children should be created.
- \* A move to another state.
- \* A significant change in financial status.
- \* A significant change in tax laws.
- \* The death of a beneficiary. For example, your spouse.
- \* A desire to add or change beneficiaries.
- \* The death or incapacity of a named executor.