

# ESTATE PLANNING PACKAGE

## Last Will and Testament

**What is a Will?** A Will is a legal instrument that takes effect upon death, and is revocable until death, that either makes a disposition of property (real or personal), directs how property should be disposed, exercises a power of appointment, or appoints a fiduciary. It allows you to appoint the person(s) that you want to administer your estate. Through the terms of your Will, you can address the care of minor children by appointing guardian(s) of their persons and trustee(s) of their property. Your Will is probated according to the laws of the state in which you are domiciled. The state of your domicile determines whether estate or inheritance taxes will have to be paid. If you have real estate in different states, your Will may have to be probated in each state.

**What happens if I die without a Will?** If you die without a Will, your property will be distributed in accordance with the laws of the state in which you are domiciled or the laws of the state in which the property is located. The state's distribution plan may be different from the one you desire. Additionally, it will be left to the state to determine the persons who will act as guardians and trustees for your minor children. The great advantage of a Will is that it allows your wishes concerning your property, beneficiaries, and children to be given full expression.

## Do I need a Will?

If you have any of the following, you should have a Will:

- minor children;
- own real estate;
- want to make a specific gift of real or personal property to a particular individual; or
- want to disinherit a natural heir.

## What your Will does not cover:

- 1) Insurance Policies: Unless they are made payable to your estate, the proceeds of life insurance policies will not pass according to the terms of your Will. Rather, the proceeds will be paid to parties designated as beneficiaries on the insurance policies themselves. If made payable to your estate, the size of your estate will increase, risking greater tax liability and exposure to the claims of creditors.
- 2) Jointly Owned Property: If you hold title to property with another person as "joint tenants with rights of survivorship," then, at the time of your death, the property automatically passes to the other person. Such jointly-owned property will not be a part of the estate that is distributed by your Will. Similarly, if you and your spouse hold property as "tenants by the entirety," your spouse will automatically get that property at the time of your death. It will not pass under your Will and will not be included in your estate.
- 3) Community Property: If you are from a community property state (AZ, CA, ID, LA, NV, NM, TX, WA, WI), you cannot give to anyone else the interest your spouse owns in the community property. Community property is defined as property that is owned jointly by a husband and wife.

**WILL**

**PLEASE PRINT CLEARLY**

**BACKGROUND INFORMATION**

Name (First, Middle, Last): \_\_\_\_\_

Gender: \_\_\_\_\_ (M/F)

State of Legal Residence: \_\_\_\_\_

State(s) where you own real estate (if any): \_\_\_\_\_

Current address: (Street) \_\_\_\_\_

(City) \_\_\_\_\_

(State, ZIP) \_\_\_\_\_

Home Phone: \_\_\_\_\_

Work/Duty Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number of Spouse (if different): \_\_\_\_\_

Currently stationed at : \_\_\_\_\_

**DOCUMENTS YOU WANT PREPARED**

\_\_\_\_\_ Will

\_\_\_\_\_ Living Will – a document that formally states your desire not to be kept alive by extraordinary medical means and leaves directions for your health care providers.

\_\_\_\_\_ Durable Power of Attorney for Health Care – a document in which you delegate to an agent the power to make health care decisions in the event you become incapacitated.

\_\_\_\_\_ Springing Durable General Power of Attorney – a document in which you delegate to an agent the power to make financial decisions in the event you become incapacitated

**MILITARY STATUS** (select the most appropriate):

\_\_\_\_\_ Active Duty Military

\_\_\_\_\_ Married to Military Retiree

\_\_\_\_\_ Retired from the Military

\_\_\_\_\_ Dependant of Active Duty Military

\_\_\_\_\_ Married to someone on Active Duty

\_\_\_\_\_ Dependant of Military Retiree

\_\_\_\_\_ Other (Please Specify): \_\_\_\_\_

**MARITAL STATUS** (select the most appropriate):

\_\_\_\_\_ Married once, and my spouse is alive.

\_\_\_\_\_ Widow/ widower

\_\_\_\_\_ Presently married, and had a prior marriage.

\_\_\_\_\_ Divorced, not presently married.

\_\_\_\_\_ Single, never married.

Spouse's Name (If married) (First, Middle, Last): \_\_\_\_\_

**CHILDREN**

How many children do you have (including adopted & stepchildren)? \_\_\_\_\_

If you have adopted children or stepchildren, do you wish to treat them the same as your natural children?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

Please list your children's names, ages, and whether they are your biological, adopted, or stepchildren:

NAME (First, Middle, Last)	AGE (in years)	GENDER (M/F)	ADOPTED (Y/N)	STEP-CHILD (Y/N)

**REAL ESTATE**

Do you own real estate?  Yes  No

*(If you own real estate)*

Do you own real estate jointly with your spouse?  Yes  No

Frequently, a husband and wife own real estate as tenants by the entirety or jointly with rights of survivorship. If you and your spouse own your home or other property this way, your will does not affect how your ownership interest passes when you die.

Do you own real estate jointly, but with someone other than your spouse?

Yes  No

Do you want your real estate disposed of differently (i.e., to a different beneficiary) than the rest of your estate?  Yes  No

**SPECIFIC GIFTS**

You may make specific gifts of cash, real estate, or personal property to specific people or charities in your will. However, these bequests will be distributed first and may deplete your estate. Also, specific bequests may complicate probate if the property given cannot be found at your death. Therefore, if you make specific bequests, only give property or amounts of cash that you are reasonably sure you will have when you die. If you make no specific bequests, all of your property will pass to your primary beneficiaries. Many states allow you to make a “personal property memorandum,” in which you can give specific items of personal property to named beneficiaries in writing separate from your will. While in most states memorandum gifts are not legally binding, your executor will give these gifts as much weight as state law allows.

Do you want a personal property memorandum (if allowed in your state)?  Yes  No

If so, some states allow for presumptions with regard to a personal property memorandum that is mentioned in your will, but not found after you die. The typical presumptions are as follows:

- 1) If no personal property memorandum is found within 30 days after **probate** of the will there is a presumption that there is no personal property memorandum.
- 2) If no personal property memorandum is found within 90 days after **death** there is a presumption that there is no personal property memorandum.

Which option do you want?  Option 1  Option 2  No presumption

If you cannot use a personal property memorandum or the property you want to bequest cannot be included in a personal property memorandum, do you want to leave any specific property to specific people, or make any cash gifts in the will, before distributing the remainder of your estate?

Yes  No

If you wish to leave specific items, what do you wish to leave and to whom?

PROPERTY DESCRIPTION	BENEFICIARY’S NAME (First, Middle, Last)	RELATIONSHIP OF BENEFICIARY TO YOU

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**DISTRIBUTION OF THE REMAINDER OF YOUR ESTATE:**

a. Many married persons choose to leave their entire estate, or the rest of their estate after making specific gifts, to their spouse, and if their spouse does not survive them, to their children. Do you wish to do this?  Yes  No  N/A (not married)

b. If you have children, how would you like your estate to be distributed to them (if your spouse does not survive you)? (*Choose One*)

Per Stirpes – meaning that your property will be divided equally among your *children*: if one of your children does not survive you, then that child’s percentage of property will be divided equally among the deceased child’s children (your grandchildren), if any.

Per Capita – meaning that your property will be divided equally among your children; if one of your children dies before you, then the remaining children would take the deceased child’s share, *disinheriting your predeceased child’s children* (your grandchildren), if any.

c. If you do not have a spouse or any children, or if they do not survive you, or if you do not wish to leave your estate to them, to whom do you wish to leave your estate?

BENEFICIARY'S NAME (First, Middle, Last)	RELATIONSHIP OF BENEFICIARY TO YOU	Percentage of Estate

d. If any of the above-named beneficiaries dies before you, who, if anyone, would you like to take their share?

BENEFICIARY'S NAME (First, Middle, Last)	RELATIONSHIP OF BENEFICIARY TO YOU	Percentage of Estate

**EXECUTOR**

Your Executor (or in some States, “personal representative”) ensures your estate is settled upon your death. This ordinarily involves going through “probate” – a court-administered procedure for settling an estate as provided in your will or under State law. Probate involves petitioning a court for letters of appointment, settling creditor claims, finding and distributing assets, and filing any necessary tax returns. Any adult may serve as your executor.

Whom do you wish to appoint as your Executor(s)? (You may select your spouse – in fact, that is a common practice. You may also name two persons to act jointly. Think carefully before you appoint joint executors as *these individuals must always act together*. This can become a *difficult situation* if they become estranged for any reason.

NAME OF EXECUTOR(S) (First, Middle, Last)	RELATIONSHIP OF EXECUTOR(S) TO YOU

Whom do you wish to appoint as your *alternate* Executor(s), if any?

NAME OF ALTERNATE EXECUTOR(S) (First, Middle, Last)	RELATIONSHIP OF ALTERNATE(S) TO YOU

**GUARDIAN**

If your children are minors when you die, and if the other natural parent is not alive or for any reason cannot act as guardian, the court will normally appoint the person(s) you name to act as legal guardian(s)

of your minor children. The individual(s) named will have physical control and custody of the children until they reach 18. The guardian will also have control of the property of the children unless you appoint a separate guardian of the children's property. If you are divorced, the court will usually appoint the child's natural parent, your former spouse, as guardian even if you provide otherwise in your will. You should still name a guardian in case your former spouse dies before you, or for any reason cannot act as the guardian.

Think carefully before you appoint joint guardians. *These individuals must always act together.* This can become a *difficult situation* if they become estranged for any reason. For example, a sister divorces after you have named both the sister and brother-in-law as the guardians. Simply naming the sister as the guardian avoids this potential problem.

If the surviving natural parent of your child/children does not survive you, whom do you wish to appoint as your child/children's Guardian(s)?

NAME OF GUARDIAN(S) (First, Middle, Last)	RELATIONSHIP OF GUARDIAN(S) TO YOU

Who will be the alternate Guardian(s), if any?

NAME OF ALTERNATE GUARDIAN(S) (First, Middle, Last)	RELATIONSHIP OF ALTERNATE(S) TO YOU

As mentioned above you can appoint a separate Guardian of the child/children's property. Whom do you wish to appoint as the Guardian(s) of the child/children's property, if any?

NAME OF GUARDIAN(S) OF THE PROPERTY ONLY (First, Middle, Last)	RELATIONSHIP OF ALTERNATE(S) TO YOU

Who will be the alternate property Guardian(s), if any?

NAME OF ALTERNATE GUARDIAN(S) OF THE PROPERTY ONLY (First, Middle, Last)	RELATIONSHIP OF ALTERNATE(S) TO YOU

Do you desire that the Guardians be required to file an inventory and account with the court upon the request of the ward (the child)?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

**DISTRIBUTION OF ESTATE TO MINORS**

If your minor children inherit your estate, who do you want to manage it for them?

\_\_\_\_\_ I want the Executor to pay it *at their election* to the child, or the child’s guardian, or to a custodian under the Uniform Gifts To Minors or Transfers To Minors Act, OR the Executor may hold the bequest until the child attains majority.

\_\_\_\_\_ I want a trust. (See below for more information on Trusts.)

If a minor inherits from you, at what age do you desire them to receive the property?

\_\_\_\_\_ 18 years                  \_\_\_\_\_ 21 years                  \_\_\_\_\_ Other

This is just your desire; the Executor or any other person is not legally bound to hold the money for the minor unless you create a trust, meaning the Executor or other person could elect to give the money to the minor immediately if you do not create a trust.

A trust is a written legal agreement between the individual creating it and the person or institution who is named to manage the trust’s assets. The individual who creates a trust is called the trustor, grantor, or creator. The trustee, or person who manages the assets, holds legal title to the assets for the benefit of one or more trust beneficiaries, who the grantor names.

**DISINHERITING SOMEONE:**

Disinheriting beneficiaries is unusual. If you have questions about disinheriting someone, you should discuss this issue with your attorney. *In most states, entirely disinheriting a spouse is not possible.*

Do you wish to disinherit someone?    \_\_\_\_\_ Yes    \_\_\_\_\_ No

If yes, who do you want to disinherit?

Name: \_\_\_\_\_ Relationship to you: \_\_\_\_\_

## **IMPORTANT NOTES**

**THE FOLLOWING DOCUMENTS ARE  
OPTIONAL AND ARE NOT REQUIRED AS  
PART OF DRAFTING A WILL.**

**YOU SHOULD CONSIDER EACH DOCUMENT  
CAREFULLY BEFORE DECIDING TO HAVE  
ONE OR ANY OF THEM CREATED FOR YOU.**

## ADVANCED MEDICAL DIRECTIVES

**LIVING WILL:** A Living Will is a witnessed document in which an individual gives instructions concerning what life prolonging procedures should be withheld or withdrawn if he or she becomes incompetent and terminally ill, in an end-stage condition, or in a persistent vegetative state. In many states, terminally ill is defined as being in a condition “caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death.” An end-stage condition is “a condition caused by injury, disease, or illness which has resulted in severe and permanent deterioration, indicated by incapacity and complete physical dependency, and for which, to a reasonable degree of medical certainty, treatment of the irreversible condition would be medically ineffective.” A persistent vegetative state is a permanent and irreversible condition of unconsciousness in which there is the absence of any kind of voluntary action or cognitive behavior, and an inability to communicate or interact purposefully with the environment. Note that a Living Will will not go into effect if an individual becomes terminally ill but is competent to make medical decisions for himself or herself. A Living Will cannot authorize euthanasia or assisted suicide.

Do you want a living will?       Yes       No

**DURABLE POWER OF ATTORNEY FOR HEALTH CARE:** A Durable Power of Attorney for Health Care is a written, witnessed document in which an individual, called the principal, designates another person, called a surrogate, to make treatment decisions for the principal should he or she become incapacitated. The surrogate may make treatment decisions, authorize the release of medical records, and apply for public benefits such as Medicare or Medicaid on behalf of the principal. If a Living Will now exists, the surrogate may also make the decision about whether to withhold or discontinue life-sustaining treatments in cases of terminal illness, end-stage condition, or persistent vegetative states.

The surrogate’s power only becomes effective when a physician makes a determination that the principal is not competent to make medical treatment decisions on his or her own behalf. The surrogate’s authority commences when that determination is made. His or her authority is ended when a doctor determines that the principal has regained the capacity to make decisions on his or her own behalf.

Do you want a Durable Power of Attorney for Health Care?       Yes       No

Do you wish to specify that you desire to donate your organs for transplant upon death?  
 Yes       No

If yes, are you also willing to donate organs and tissue for medical, educational, or scientific purposes?  
 Yes       No

Are there any organs or tissues you would not want to donate? If so, what are they? \_\_\_\_\_

Do you want the authority to donate organs to be expressly conditioned upon there being no charge or assessment against your estate, your heirs, or your insurance company?       Yes       No

Do you wish to specify that, if possible and if it does not place an undue burden upon your family, that you prefer to die at home rather than in a hospital?       Yes       No



**SPRINGING DURABLE GENERAL POWER OF ATTORNEY**

Your will enables you to dispose of your property as you wish *after* you die. While you are living, you have the right to decide what happens to that property as long as you are of sound mind. But if you become incapacitated, and cannot handle your own affairs, a court order may revoke your right to manage your own money/property and appoint a guardian or conservator. To protect you from this, you may appoint an agent through a power of attorney.

A power of attorney is your written authorization for someone to act on your behalf, for whatever purpose you designate. Ordinarily, a power of attorney expires if you become mentally disabled – the time when you need help the most. A **springing durable** power of attorney can take effect when you **become** unable to manage your own personal and financial affairs and will last as long as you are alive, until such time that you become competent to manage your own affairs, or until you revoke it. As long as you are mentally competent, you can revoke a durable power of attorney whenever you like simply by destroying the document. If you choose to have a springing durable general power of attorney, remember to name someone you trust as your attorney-in-fact. Your agent will have great authority over your affairs. Not only can they keep your affairs in order, but they have the potential to abuse this document at your expense.

Would you like a springing durable general power of attorney?     Yes     No

Do you want your spouse to act as your agent?     Yes     No

Unless you selected your spouse to act as your agent **and** your spouse has the same address as you do, please provide the name, address and relationship of your first choice of agent:

Agent's Name (First, Middle, Last)	Relationship of Agent to you
Address	
City, State, ZIP	Telephone

Please provide the name, address, phone number, and relationship of your second choice of agent:

Alternate Agent's Name (First, Middle, Last)	Relationship of Alternate Agent to you
Address	
City, State, ZIP	Telephone

**FUNERAL ARRANGEMENTS**

You may have a strong desire regarding your funeral (for example, burial or cremation). As a practical matter, your funeral may have been carried out by the time your will is read. Finding out after the fact that the arrangements were contrary to your will may cause some dismay for your survivors. Therefore, we recommend that you tell your desires to your next of kin at your earliest opportunity other than in your will, often in a Letter of Instruction that accompanies your will. You may still state your desires in your will if you choose to do so. However, there is no legal obligation for anyone to follow them.

**You should tell the appropriate family members of your desires NOW!**

At my death, I prefer:

- I do not wish to express my desires concerning my remains in my will.
- To be cremated.
- To have my body given for medical or scientific purposes.
- To be buried.
- To be buried at a specified gravesite or location. (Please specify location): \_\_\_\_\_
  
- With full military honors. (You may select this option in addition to one of the above.)
- Other: \_\_\_\_\_

**DISPOSITION OF REMAINS**

Would you like to appoint someone to dispose of your remains (such as plan your funeral, arrange for cremation, etc.)?                       Yes                       No

If yes, who would you like to appoint? Name: \_\_\_\_\_