

# Last Will and Testament

of

I,

a resident of and domiciled in the State of New York, revoke my former Wills and Codicils and declare this to be my Last Will and Testament.

## ARTICLE I

**Payment of Debts and Expenses:** I direct that my just debts, expenses of my last illness and funeral, the expenses of the administration of my estate, and all estate, inheritance and similar taxes payable with respect to property included in my estate, whether or not passing under this will, and any interest or penalties thereon, shall be paid out of my residuary estate.

## ARTICLE II

**Spouse and Children:** I am married to (hereinafter referred to as “spouse”). My child/children is/are

(hereinafter referred to as “child” or “children”). All references to any child or children include any child or children born to or adopted by me after the signing of this Will.

## ARTICLE III

### Disposition of Property

**REAL PROPERTY:** I give all my real estate, and all rights that I have under any related insurance policies, to

**TANGIBLE PERSONAL PROPERTY:** I give the items of tangible personal property listed below, if owned by me at the time of my death, as follows:

All other tangible personal property not given to a named beneficiary shall be part of my residuary estate.

**RESIDUARY ESTATE:** I give all the rest, residue and remainder of my property and estate, both real and personal, of whatever kind and wherever located, that I own or to which I shall be in any manner entitled at the time of my death (collectively referred to as my “residuary estate”), as follows:

If none of the beneficiaries named in this Will shall survive me, I give my residuary estate to those who would take from me as if I were then to die without a Will, unmarried and the absolute owner of my residuary estate, and a resident of the State of New York.

#### **ARTICLE IV**

**Appointment of Executor/Trix:** I appoint to be my Executor/trix. No Executor/trix shall be required to file or furnish any bond, surety or other security.

**Powers of Executor/Trix:** I grant to my Executor/trix all powers and authority granted by law or necessary or appropriate in the proper administration of his/her responsibilities as Executor/trix. I also grant to my Executor/trix power to retain, sell at public or private sale, exchange, grant options on, invest and reinvest, and otherwise deal with any kind of property, real or personal, for cash or on credit; to hold, manage, insure, repair, improve, demolish, divide, and otherwise deal with and dispose of any property; to borrow money and mortgage, encumber or pledge any property to secure loans; to exercise all powers of an absolute owner of property; to compromise and release claims with or without consideration; and to employ attorneys, accountants and other persons for services or advice.

#### **ARTICLE V**

**Appointment of Guardian:** Should it become necessary to appoint a Guardian, I appoint to be the Guardian of the person and property of any child of mine who has not attained the age of majority. No Guardian shall be required to file or furnish any bond, surety or other security in any jurisdiction.

#### **ARTICLE VI**

##### **Miscellaneous Provisions**

(a) If any property of my estate is bequeathed to a minor or incompetent, my Executor/trix,

at any time and without court authorization, may: distribute the whole or any part of such property to such beneficiary; or use the whole or any part for the health, education, maintenance and support of the beneficiary; or distribute the whole or any part to a guardian, committee or other legal representative of the beneficiary, or to a custodian for the beneficiary under any gifts to minors or transfers to minors act, or to the person or persons with whom the beneficiary resides. Evidence of any such distribution to or the receipt by the person to whom the distribution is made shall be a full discharge of my Executor/trix from any liability with respect to such distribution. If such beneficiary is a minor, my Executor/trix may defer the distribution of the whole or any part of such property until the beneficiary attains the age of eighteen (18) years, and may hold the same as a separate fund for the beneficiary with all of the powers described in Article IV. If the beneficiary dies before attaining said age, any balance shall be paid and distributed to the estate of the beneficiary

- (b) I direct that my spouse shall be deemed to predecease me unless he/she survives me by more than 14 days.
- (c) If any beneficiary of this Will, other than my spouse, shall die within 30 days of my death or prior to the distribution of my estate, I hereby declare that I shall be deemed to have survived such person.
- (d) 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 or any trust estate, and my estate or the trust 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 non-actions as the fiduciary, except for such actions or non-actions which constitute fraudulent conduct or bad faith.
- (e) Any disputes which arise between two or more beneficiaries shall be resolved by my Executor/trix.
- (f) If any beneficiary to this Will is indebted to me at the time of my death, and the debt is evidenced by a valid Promissory Note payable to me, then such person's portion of my estate shall be diminished by the amount of such debt.
- (g) It is my desire that, upon my death my remains be disposed of in the following manner:
  
- (h) If any part of this Will is declared invalid, illegal or inoperative for any reason, the remaining parts shall be effective and fully operative.

**In Witness Whereof**, I,  
sign, seal, publish and declare this instrument as my last Will and Testament  
on \_\_\_\_\_ 20\_\_\_\_\_

The foregoing instrument was signed, sealed, published and declared by \_\_\_\_\_  
the above-named Testator/trix,  
to be his/her Last Will and Testament in our presence, all being present at the same time, and we,  
at his/her request and in his/her presence and in the presence of each other, have subscribed our  
names as witnesses on the date above written.

\_\_\_\_\_ residing at \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ residing at \_\_\_\_\_  
\_\_\_\_\_

**AFFIDAVIT OF WITNESSES**

STATE OF NEW YORK, COUNTY OF

ss.

Each of the undersigned, residing  
at and  
at residing  
respectively,  
being individually and severally duly sworn, did depose and say that: The foregoing Last Will and Testament was subscribed in our presence and sight by the Testator/trix named therein.

The undersigned witnessed the execution of said Will of  
on 20 at

At the time this Last Will and Testament was so subscribed, the Testator/trix declared it to be his/her Last Will and Testament. The undersigned thereupon signed their names as witnesses at the end of said Will at the request of the Testator/trix, in the presence of the Testator/trix and each other. At the time of so executing said Will, in our respective opinions, the Testator/trix was at least eighteen years of age, and was of sound mind, memory and understanding, under no constraint, duress, fraud or undue influence, and in no respect incompetent to make a valid Will.

In our respective opinions, the Testator/trix was able to read, write and converse in the English language, and was not suffering from any defect of sight, hearing or speech, or from any other physical or mental impairment which would affect his/her capacity to make a valid Will. Each of us was acquainted with the Testator/trix, and we make this affidavit at his/her request. Said Will was shown to us at the time this affidavit was made, and we examined it as to the signature of the Testator/trix and our signatures. This Last Will and Testament was executed as a single, original instrument, and not in counterparts.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Severally subscribed and sworn to  
on 20

\_\_\_\_\_

# Last Will and Testament

of

Dated: 20

*Prepared by:*

## INSTRUCTIONS FOR EXECUTING WILLS\*



### In Advance

- Check all provisions of the Will (substantive dispositions, spelling of names, recitation of domicile, etc.), and make any appropriate revisions. Make sure the page break for the signature page is at an appropriate place in the text.
- Complete and check the Testator/trix's Family Tree Affidavit and summary of assets (if they are to be used).
- Deliver a copy of the Will to the Testator/trix, and confirm that it is understood and that it expresses Testator/trix's intent.
- Make any necessary revisions, and resubmit any revisions for approval.
- Fasten the Will together, preferably with a ribbon and a seal to be affixed by the Testator/trix. Using an eyeletter to bind the Will is an alternative. If you use staples the Testator/trix should be warned never to remove the staples.

### Witnesses

Most states require two witnesses. Vermont requires three witnesses. Louisiana requires that the maker affix his/her signature to every page of the document on which material provisions are found, in addition to the last page of the document, and further requires that the execution of the maker of a will be attested to by a notary.

### Day of Execution

Have the Testator/trix and witnesses assemble in a room and engage in conversation, so the witnesses can testify that the Testator/trix is of sound mind. The witnesses should be adults over the age of 18 who are not beneficiaries under the Will. If possible, the witnesses should be people who will be easy to locate upon the death of the Testator/trix. During the execution of the Will, the Testator/trix and all witnesses must at all times be present. No one should leave the room, or be out of the sight or hearing of the others. The Will should never be out of the sight of anyone. The proceedings should reflect the gravity of making a will.

Have the Testator/trix again read the Will (the "original" which is to be executed).

Ask the Testator/trix whether the Will states his/her intent. *[If not, make any necessary revisions before the execution of the Will.]*

Ask the Testator/trix to insert the date of the Will (if blank) and sign the Will (using his/her name as typed in the Will), in the presence of all of the witnesses. BLACK INK is preferred. Only the "original" Will should be signed, not any copies.

Ask the Testator/trix: "Do you declare this to be your Last Will and Testament?"

Ask the Testator/trix: "Do you wish that *[name the Witnesses]* act as witnesses to your Will, and sign their names as witnesses to your Will, and sign an affidavit that they witnessed the execution of your Will?"

Exhibit the signature of the Testator/trix to the witnesses. *[The witnesses do not have to know the content of the Will. The witnesses need not, and should not, read the entire Will.]*

The witnesses (in the presence of each other and the Testator/trix) should sign their names and write their home addresses at the end of the Will.

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\*Information drawn from the "WILLS LIBRARY," DL Drafting Libraries, document assembly programs. For more information go to [www.blumberg.com/software/dl/index.html](http://www.blumberg.com/software/dl/index.html)

Tell the witnesses: “The formal requirements of the statutes of the state of *[name the state]* regarding the ceremony of execution and attestation of a will have been duly fulfilled and satisfied.”

The witnesses should read the Affidavit which follows the Will and execute and swear to it before a notary public.

Inspect the Will and confirm that the date, signatures, and other blanks are properly inserted and legible. The Will cover should be dated.

### **Post-Execution**

Conform copies of the Will and the Affidavit by inserting the dates, names and addresses that have been added to the original.

Determine where the original Will is to be kept, and deliver it (getting a receipt). Send a letter to the Testator/trix, reciting the time and place of the execution of the Will, and the location of the original Will (or enclosing it). If the original Will is delivered to the Testator/trix, inquire where it will be kept and request that the Executor/trix be informed of the location.

Remind the Testator/trix that if revisions are necessary, a new Will will have to be executed in the same manner the original will was executed. The Testator/trix should not write on or otherwise attempt to revise the Will.

Decide whether to retain or destroy any older, superseded wills, and document the disposition.

## **WILL BINDING INSTRUCTIONS**

Fasten the Will together, preferably with a ribbon and a seal to be affixed by the Testator. Using document eyelets to bind the Will is an alternative. Some people use staples, but if you must use staples, never remove the staples.

**How To Ribbon A Will**—Use a razor to make three horizontal cuts on the signature page of the Will, where the seal is to be affixed next to the signature line for the Testator. The cuts should be parallel, about ¼" apart and about ½" in length (the ribbon later will be fed through these cuts). Replace the signature page in the Will, and fold the cover over the top edge of the Will.

Punch three evenly spaced holes through the folded edge of the cover and pages of the Will. Take a 4 foot length of ribbon and feed all but 1 foot of it up the center hole starting behind the signature page. Then feed the ribbon down the left hole, back up the center hole, and down the right hole. Then feed the ribbon back up the center hole until you reach the signature page, so that the two ends of the ribbon both come out of the center hole behind the signature page. Feed both ends of the ribbon up, then down, and back up through the three cuts on the signature page. Cut off any excess ribbon so that only about 2" of ribbon appears below the cuts on the signature page. The Testator should affix a seal over the cuts when he executes the Will.

*(More information at [www.blumberg.com/will/index.html](http://www.blumberg.com/will/index.html).)*