

## **INSTRUCTIONS FOR OBTAINING A WILL**

**Note: It may sound over simplistic, but know what you own and know how it is titled. For example, know how the deed to your house is titled, the titles to your motor vehicles, bank accounts, mutual fund accounts, stock certificates, insurance policies, IRAs, annuities, etc. Further, know where these documents are located. It is suggested that you keep a copy handy so that you can recall how your assets are titled and whether it continues to reflect your intent.**

1. Please complete the attached will worksheet to the best of your ability.
2. Please bring the following documents with you for your appointment:
  - a. A completed will worksheet.
  - b. A **copy** of your current will, if possible (for reference purposes only). Please avoid bringing any existing, original will, and do not mark on it in any case, because doing so could invalidate it.
  - c. A list of any questions you may have for me.

## **WILL TERMINOLOGY**

**WHAT IS A WILL?** A will is a legally effective declaration of a person's wishes as to the disposition of his/her property upon his/her death. It must be executed with the formalities required by statute. The provisions of a will do not take effect until after the death of the maker. A will never disposes of the proceeds of insurance policies with named beneficiaries, nor does it dispose of some items of property which are held under various forms of special ownership, such as joint tenancy with a right of survivorship, or tenancy by entirety. In a will, you will designate an executor/trix, and if minor children are involved, a guardian (see definitions below). It is important that you contact the prospective executor/trix and guardian prior to the preparation and execution of the will to ensure that he/she/they is/are willing to accept the position.

**WHO IS THE BENEFICIARY?** Anyone to whom the maker of a will (testator/trix) leaves a portion of his/her property.

**WHAT DOES BEQUEATH MEAN IN A WILL?** To give personal property by will.

**WHAT IS A BOND?** Money paid to the court or a bonding company by a guardian or executor to insure against loss occasioned by their negligence or theft.

**WHAT IS DOMICILE?** A person's permanent home. The place to which, whenever he/she is absent, he/she has the intention of returning. You can have more than one residence, but you can only have one domicile. Your intent, voting, paying taxes, registering automobiles, obtaining a

driver's license, and location of assets are factors considered in determining domicile. For military members, your domicile is often your legal residence (e.g., your home of record), not the place you are currently living.

**WHAT IS AN ESTATE?** All property, real and personal, in which a person has an interest, such as money, savings accounts, stocks, house, furniture, insurance policies, etc.

**WHAT DOES RESIDUARY ESTATE MEAN?** Residuary is a derivative of the word "residue." It means what is left over. Your residuary estate is the portion of your estate that is left over when everything else is disposed of.

**WHAT DOES EXECUTION MEAN?** To validate a will by correctly signing it and having it witnessed.

**WHO IS THE EXECUTOR/TRIX?** The person named in a will to carry out the wishes expressed in the will. An Executor is male; an Executrix is female. Upon the death of a maker of a will, the Executor/trix must take the will to the proper court for probate. Once the court accepts the will as valid, the court officially appoints the person as Executor/trix. An Executor/trix may be entitled to compensation for his/her services. Individuals serving in this capacity serve subject to court approval. While most courts follow the desires of the Testator/trix in his/her will, they are not bound to do so. A bond may be required of an Executor/trix. In some states the term "Personal Representative" means the same thing as Executor/trix.

**WHO IS A GUARDIAN?** One who is responsible for caring for the person and/or property of a minor child. Individuals serving in this capacity serve subject to court approval. While most courts follow the desires of the Testator/trix in his/her will, they are not bound to do so. Courts can require guardians to post a bond.

**WHO IS THE TESTATOR/TRIX?** You, the person making the will. A Testator is male; a Testatrix is female.

**WHAT IS PERSONAL AND TANGIBLE PROPERTY?** Property which is moveable.

**WHAT IS A PROBATE?** A court proceeding where the Executor/trix seeks to establish a will as genuine, settle all the debts of an estate, and distribute the property in the estate to the heirs according to the wishes of the will maker as expressed in the will.

**WHAT IS A PROBATE ESTATE?** The portion of an estate that requires court supervised administration to effect transfer of title. It does not include property transferred at the time of a person's death by other means, such as property held as joint tenants with right of survivorship, or life insurance paid to a designated beneficiary. For tax purposes, all property which the decedent owned or in which he/she had an interest, may be included in the taxable estate, although some of it is not within the probate estate.

**WHAT IS REAL PROPERTY?** Property that has a fixed location, such as land or a house.





_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**C. VALUE OF YOUR ESTATE** In order to determine what type of estate plan is best for you, we need an estimate of the value of your estate. List the value of assets in your name, and if married, the value of assets held in your spouse's name and the value of those held jointly with your spouse.

Spouse's	Your's
Real estate equity (fair market value less the mortgage still owed):	
\$ _____	\$ _____
Bank accounts:	
\$ _____	\$ _____
Investment accounts (i.e. mutual funds, stocks, bonds, IRAs, 401K):	\$ _____
Personal Property (i.e. jewelry, vehicles, furnishings, collectibles):	\$ _____
Survivor's Benefit Plan (SBP) (Obtain valuation from DFAS)	\$ _____

1. Do you own any life insurance policies or have the right to change the beneficiaries on any policies? Yes \_\_\_ No \_\_\_ If Yes, bring a copy of your beneficiary forms for all your life insurance policies. Your attorney will review these forms and assist you in filling out your SGLI designation form and recommend language for all other policies.

2. What is the amount of the insurance?

	Your's	Spouse's
SGLI	\$ _____	\$ _____
Other Policies	\$ _____	\$ _____

3. Do you own any interest in a business or farm? Yes \_\_\_ No \_\_\_  
If Yes, describe: \_\_\_\_\_

4. Do you own any interest in mineral, gas or coal rights? Yes \_\_\_ No \_\_\_  
If Yes, what type \_\_\_\_\_

5. Do you own or have any interest in copyrights or patents? Yes \_\_\_ No \_\_\_
6. Are you the beneficiary of any promissory notes or deeds of trust? Yes \_\_\_ No \_\_\_

**D. DISINHERITANCE**

1. Are you expressly disinheriting a member of your family? Yes\_\_\_ No \_\_. You do **not** need to expressly disinherit a former spouse since a former spouse is deemed to have predeceased you for estate purposes once your divorce is final, unless you specifically name the former spouse as a beneficiary in your will. If Yes, complete the following:

\_\_\_\_\_

First	Middle	Last	Relationship to you
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**Do you wish to disinherit anyone who contests your Will? Yes \_\_\_ No \_\_\_\_\_**

**E. REAL PROPERTY**

1. List any real property in which you have an interest. Describe how the property is titled (joint tenancy, tenancy by the entirety, tenants in common) and name any co-owners. **Bring a copy of your real estate deed so that the manner of holding title can be confirmed.**

Property	Co-Owner
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Property	Co-Owner
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2. Do you have mortgage life insurance? Mortgage life insurance is an insurance policy that pays off your mortgage upon your death. Yes \_\_\_ No \_\_\_
3. To whom do you want to give your real property? \_\_\_\_\_ Check here if spouse, if not:

First	Middle	Last	Relationship to you	Address
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First	Middle	Last	Relationship to you	Address
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**F. TANGIBLE PERSONAL PROPERTY**

1. Who do you want to receive your tangible personal property?
  - a. Primary beneficiary(ies): \_\_\_\_\_ Check here if spouse, if not spouse:

First	Middle	Last	Relationship to you
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First	Middle	Last	Relationship to you
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b. Secondary beneficiary(ies):

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First	Middle	Last	Relationship to you
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First	Middle	Last	Relationship to you
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c. Contingent beneficiary(ies):

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First	Middle	Last	Relationship to you
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First	Middle	Last	Relationship to you
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2. **Monetary Bequests:** You may elect to make specific gifts of cash to specific people or charities in your will. However, these bequests will be distributed first and may deplete your estate. Therefore, if you make any specific bequests, you should only give amounts of cash that you are reasonably sure you will possess at the time of your death. If you make no specific bequests, all of your money will pass to your beneficiaries in the order you have designated.

a.) Do you wish to make any specific bequests of money in your will? \_\_\_\_\_ yes \_\_\_\_\_ no

b.) If yes, please list the name and relationship of each beneficiary and the amount of each bequest:

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3. Do you wish to make a personal property memorandum listing specific items and the beneficiary that receives these items?

Yes \_\_\_\_\_ No \_\_\_\_\_

**G. RESIDUARY ESTATE BENEFICIARIES** Your residuary estate contains all the items you have not gifted by other provisions of your will.

1. Primary beneficiary(ies): \_\_\_\_\_ Check here if spouse, if not spouse:

\_\_\_\_\_  
First Middle Last Relationship to you

\_\_\_\_\_  
First Middle Last Relationship to you

2. Secondary beneficiary(ies):

\_\_\_\_\_  
First Middle Last Relationship to you

\_\_\_\_\_  
First Middle Last Relationship to you

3. Contingent beneficiary(ies):

\_\_\_\_\_  
First Middle Last Relationship to you

\_\_\_\_\_  
First Middle Last Relationship to you

**H. MINORS AND INCAPACITATED BENEFICIARIES** I will explain the options available if one or more of your beneficiaries is a minor or is incapacitated.

1. Please check the age at which any minor beneficiary is to receive your estate outright:

\_\_\_\_\_18 \_\_\_\_\_21

\_\_\_\_\_Other age (please indicate age)



2. Name of Custodian for each child (you should have only have 1 custodian, rather than co-custodians) or Name of Trustee for each trust (you can have co-trustees):

First	Middle	Last
First	Middle	Last

Check here if you are naming Co-Trustees: \_\_\_\_\_

3. Name of Successor Custodian or Trustee:

First	Middle	Last
First	Middle	Last

Check here if you are naming Co-Trustees: \_\_\_\_\_

4. For trusts only: If more than one minor is to inherit, do you want the assets combined into one trust (a “family pot trust”) for the benefit of all beneficiaries or do you want the assets divided at the time of your death into separate shares for each minor? (Assets held by custodians cannot be combined into one custodial account)

5. Are any beneficiaries mentally or physically disabled? Yes\_\_ No\_\_ If Yes, complete the following:

First	Middle	Last	Relationship to you
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Nature of the disability: \_\_\_\_\_

Does the beneficiary receive SSI, or other federal or state benefits? Yes \_\_ No \_\_

- J. GUARDIAN OF THE CHILD(REN)** If you have minor children, please indicate the person(s) you desire to be the guardian(s) of your children if your spouse or your children’s other parent does not survive you. You may appoint a single guardian or co-guardians. The nomination of successor guardians is recommended.

**If you are divorced, keep in mind the court will ordinarily appoint your former spouse to be the guardian (as the children’s other natural parent), notwithstanding your direction here. You should still select a guardian, however, in case your former spouse predeceases you or for any reason cannot act as the children’s guardian.**

Primary Guardian: \_\_\_\_\_  

First	Middle	Last	Relationship to you
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Co / Successor: \_\_\_\_\_  

First	Middle	Last	Relationship to you
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Check here if you are naming Co-Guardians: \_\_\_\_\_



**THE ADVANCE MEDICAL DIRECTIVE AND THE APPOINTMENT OF AGENT FOR HEALTH CARE DECISIONS ARE OPTIONAL AND ARE SEPARATE FROM YOUR WILL.**

**ADVANCE MEDICAL DIRECTIVE**

Also known as a **Living Will**, an Advance Medical Directive is an instruction to your family and medical personnel expressing a desire for a "natural death," meaning withholding or withdrawal of life sustaining treatment (treatment which only prolongs the process of dying and does not cure you) if you are terminally ill and death is imminent. Note that this instruction will likely stop intravenous food and liquid unless you direct otherwise. An Advance Medical Directive is not giving someone else the right to decide your fate, rather you are giving specific instruction to remove artificial life support.

**If you do not want to be kept alive by artificial life support when you are terminally ill with no hope of recovery or when you are in a persistent vegetative state, you should have an Advance Medical Directive.**

*Do you want an ADVANCE MEDICAL DIRECTIVE? Yes \_\_\_ No \_\_\_*

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**APPOINTMENT OF AGENT(S) FOR HEALTH CARE DECISIONS**

This allows you to designate an agent to ensure that doctors and hospital staff carry out your advance medical directive if you are incapacitated. Additionally, your agent will act on your behalf if you are incapable of making an informed decision regarding your health care. You may appoint an alternate agent to act in the event the first agent cannot or will not act. You may also have your agents act jointly or separately.

Is the Power of Attorney to express a desire to die at home rather than at a hospital? Yes \_\_\_ No \_\_\_

If a guardian or conservator must be appointed do you want the person(s) named as your agent(s) to be appointed your guardian or conservator? Yes \_\_\_ No \_\_\_

1. First Agent:

\_\_\_\_\_  
First Middle Last Relationship

Address: \_\_\_\_\_  
Street City State Zip

Telephone Number: ( ) \_\_\_\_\_

2. Second Agent:

<b>First</b>	<b>Middle</b>	<b>Last</b>	<b>Relationship</b>

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

	<b>Street</b>	<b>City</b>	<b>State</b>	<b>Zip</b>

Telephone Number: (\_\_\_\_) \_\_\_\_\_

**If you have designated a second agent, you must choose one of the following:**

- \_\_\_\_ Either agent can act separately; OR
- \_\_\_\_ The agents must act jointly unless one becomes incapacitated (both agents must agree), OR
- \_\_\_\_ My second agent is to act only if the first cannot or will not act.

**ORGAN DONATION** In your Appointment of Agent, you may authorize the donation of your organs. (However, please note that this is not the optimal place to designate organ donation. To ensure your directions regarding organ donation are carried out, you should obtain an organ donor card or place such desire on your drivers license.)

Do you want your organs donated for **transplant** purposes? Yes \_\_\_ No \_\_\_

If Yes, do you ALSO want to donate your body to science? Yes \_\_\_ No \_\_\_

Is the authority to donate organs to expressly **exclude** certain organs? Yes \_\_\_ No \_\_\_

If yes, please list organs to be excluded \_\_\_\_\_

**Is the authority to donate organs expressly conditioned upon there being no charge or assessment against estate of testator/testatrix, his/her heirs or his/her insurance company?**

Yes \_\_\_ No \_\_\_

Do you prefer to die at home rather than in a hospital if it is not an undue burden on your family?

Yes \_\_\_ No \_\_\_

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**SPRINGING POWER OF ATTORNEY**

This third document allows you to designate an agent to manage your finances, i.e. pay your bills, deposit checks, sell your house, if you are incapacitated. Your agent will only be authorized to act on your behalf if a doctor determines that you are unable to manage your finances due to disability or incapacity. You may appoint an alternate agent to act in the event the first agent cannot or will not act. You may also have your agents act jointly or separately.

1. First Agent:

First	Middle	Last	Relationship	
Address:				
Street	City		State	Zip

4. Second Agent:

First	Middle	Last	Relationship	
Address:				
Street	City		State	Zip

**For Attorney Use Only:**

1. Is the Power of Attorney to authorize the making of gifts? Yes \_\_\_\_ No \_\_\_\_
2. Is the Power of Attorney to provide detailed powers with respect to retirement benefit plans and IRAs? Yes \_\_\_\_ No \_\_\_\_
3. Is the Power of Attorney to authorize selling or disposing of a specific parcel of land? Yes \_\_\_\_ No \_\_\_\_
4. If Yes, give the street address of the property: \_\_\_\_\_

**FUNERAL ARRANGEMENTS:**

You may have a strong desire regarding funeral arrangement (for example, burial or cremation). As a practical matter, your funeral arrangements are likely to have been carried out already 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, it is recommended that you communicate your desires to your next of kin at your earliest opportunity. If you wish, however, your preference may also be recorded in the will.

You may express your desires regarding the disposition of your remains (e.g. cremation, military honors, or burial at a certain location or gravesite). However, if you elect to state your desires in your will, do not rely on your will alone to communicate those desires, as wills may not be read prior to the funeral! You should tell the appropriate family members of your desires NOW!

\_\_\_\_\_ I do not wish to express my desires concerning my remains in my will and leave this decision to those who survive me.

At the time of death, I prefer:

\_\_\_\_\_ To be cremated.

\_\_\_\_\_ To have my body given for medical or scientific purposes.

\_\_\_\_\_ To be buried at a specified gravesite or location. (Please specify location):

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\_\_\_\_\_ To be buried at sea.

\_\_\_\_\_ To be buried with full military honors. (You may select this option in addition to one of the above.)

\_\_\_\_\_ Other: \_\_\_\_\_

## **Confirmation of Information and Instructions:**

I, (please print your name) \_\_\_\_\_ confirm the information provided by me in this form is complete and accurate and that the instructions I have provided reflect my wishes.

\_\_\_\_\_  
Client

\_\_\_\_\_  
Date

## **Dual Representation Authorization**

Dear Clients:

You and your spouse may wish to meet together with the same attorney to discuss your will and ancillary documents. Due to the potential for conflicts of interest, it is the policy of this office to raise this issue with you and require your informed consent to proceed. Therefore, your signature below will confirm the following:

(1) You have requested that the same attorney represent each of you and advise you both on certain estate planning matters.

(2) It is contemplated that the matters to which this representation will extend will include the following:

- Analysis of the assets owned by each of you at the time of your marriage, including consideration of the fair market value of such property and the nature in which title was then held;
- Analysis of all property now owned by each of you, including consideration of its fair market value, the manner in which title to such property is now held, and a categorization of such property as separate, community, or quasi-community property;
- Discussions about the manner in which you wish to dispose of any property over which you may have any power of disposition at the time of your death; and
- Preparation of the documents necessary to accomplish the desired disposition, including the drafting of wills, trusts, property agreements, and other documents as may be required.

(3) You are aware that, during the course of the estate planning work, disagreements may arise between you and your spouse with respect to the ownership of your property and its desired disposition during your lifetimes and at your deaths. Differences of opinion on the disposition of the property, under ethical rules, do not prevent the same attorney from continuing to represent both of you. However, during the course of the estate planning, conflicts of interest between you and your spouse may also arise, such as issues regarding the ownership of certain property.

(4) Ordinarily, under such circumstances, one attorney cannot represent both of you. It may be better for each of you, under such circumstances, to have separate, independent counsel to avoid the possibility that my advice to one of you is influenced by my representation of the other. Nevertheless, you have requested, with a full understanding of your right to, and the advantages

of, independent counsel, that you both be represented by the same legal assistance attorney in all of the above matters.

(5) Although they rarely occur, if a conflict of interest does arise between the two of you of such a nature that your attorney believes it impossible, in their judgment, to perform any obligations to either of you in accordance with this letter, they will withdraw from all further representation of either of you in this matter at that time and advise both of you to obtain independent counsel.

(6) You have each agreed that there will be complete and free disclosure and exchange of all information your attorney receives from either or both of you in the course of their representation of you, and that such information shall not be confidential between you irrespective of whether your attorney obtains such information in conferences with both of you or in private conferences with only one of you, including any conferences that may have taken place before the date of this letter.

Very respectfully,

Will Hudson, Esquire

We, (please print your names) \_\_\_\_\_ and \_\_\_\_\_, have read the foregoing letter, understand the same, consent to the disclosure and exchange of all information received by our attorney from either one of us, with the other one of us, and consent to our attorney representing each and both of us in the aforementioned estate planning services.

APPROVED THE \_\_\_\_\_.

\_\_\_\_\_  
Client

\_\_\_\_\_  
Client