Will Instructions

Arkansas Legal Services Partnership Elder Law Series

Should I have a Will?

- **Yes**. Even if you do not have very much, you probably still have something to pass on to your loved ones.
- Avoid family disagreements. Many families struggle over who should get what.
- A Will puts you in charge. You should be able to give your things to whomever you want, not to whomever a judge decides should get it.
- If you have children, then you need to make it clear to the judge and to your family who you want to have custody of your kids.

Will Instructions

The Will form provided is very simple and can be used only for small estates. You should seek the advise of an attorney if you have a lot of property including:

- Real estate
- Personal property
- Retirement plan benefits
- Investments such as stocks and bonds, or
- Life insurance

Remember, a small amount here and there can add up to a large estate, especially when you include life insurance, and poor planning could result in you losing a large portion of your estate to **estate taxes** (Federal tax on a dead person's assets to his heirs and beneficiaries).

You should seek the advise and help of an attorney if:

- ✓ If you feel that your Will is likely to be **contested** (legally challenging the will) by any member of your family; or
- ✓ If you think someone other than who you want to have custody of your kids may try and get custody.

Instructions:

1 Fill in your full name on the first line. It is very important that you do one Will for **each** person. **DO NOT MAKE ONE WILL FOR BOTH YOU AND YOUR SPOUSE**. If one of you were to die before the other, then the survivor would not be able to change many parts of the Will. This could result in losing some of your estate to taxes or other possibilities that should be avoided.

2 Next, fill in your full name again and then give your full address. This section explains that this Will is meant to be your final Will and replaces all others that you may have made before. This does not mean that you can't make changes in the future, but if you do so it must be in writing in an additional will or a codicil (amendment). Seek an attorney's help if you do not understand or need help.

3 Next, in section **FIRST**, appoint who you want to be the **Executor of your will**. This person will be the one who makes sure what you want done is done. This should be someone that you trust and who has the intelligence and time to carry out the terms of your Will. It can also be an attorney or a bank. You should discuss this decision with whomever you choose before making your final selection. Anyone that you choose can charge a fee to your estate for being the Executor. Fill in the full name of the person in the space provided. Also fill in a substitute in case your first choice cannot or will not do it.

4 Next, fill in the name of the person who you want to be guardian to your children. This can be the same person that you named as Executor but it does not have to be. A bank cannot be named as Guardian. In many cases this might be your spouse if she or he is the parent of your

children, but it can be anyone you choose. Understand here that a judge can overrule whom you have chosen. Next, name someone who can act as guardian in case your first choice is unable or unwilling to. This is important to provide for an alternate placement for the children in case both you and your spouse die.

You should discuss your decision with both your first and second choice to see if they are willing to act as guardian. If you have children who have different fathers or mothers, or who you want to go to different people, then you can name different guardians for each. Do this by naming each child, their guardian, and a successor guardian in separate sections. Make as many sections as needed for each situation.

5 Choose someone to act as **Trustee** in case your estate creates a Trust. A Trustee is someone who is given legal responsibility to hold property in the best interest of another. This often occurs when you die and your property goes to someone under 18 years old. Remember, this is a possibility because your spouse could be killed in the same accident you are and everything could go to your kids. The Trustee can be the same person or bank as the Executor but it does not have to be.

6 Normally, the people or institutions must by an insurance type instrument called a bond to protect the estate in case they do something "wrong". Many people want to waive that bond so their relatives who are acting as Executor, Guardian, and Trustee do not have to spend the money to get one. If you do not want to require them to put up a bond, leave the Will as it is. If you want them to post a bond, then leave the sentence out or change it to reflect that wish.

7 Read through the Construction section and make sure you understand and agree with each and every part. If you do not agree, then change it appropriately or seek the help of an attorney.

8 In the next section **Specific Bequests**, you can make a list of your **personal property** say to whom you want your things to go to**.** Things that you can literally pick up and move can be put on this list such as Quilts, Guns, and Jewelry.

Stocks, Certificates of Deposits, Bank Accounts and other such items are dealt with in the next section.

9 Sign the list, Date the list, and then attach this list with a staple to the Will. This allows you to change your mind simply on personal items. You can change your mind and remove the old list and attach a new one. If it isn't attached to your Will or if there is a problem with the dates that makes it unclear which list should be followed, then your wishes may not be carried out. **Be very careful**.

10 In this section under part (b), list any other property you want to give to someone specific. Here is where you put real estate, stocks, investments, checking accounts, savings, pensions, etc. An example of this is shown in (b). Copy (b) as many times as you need to fully explain your specific gifts. Change the wording of the section to show what property you are giving away.

Some examples of how you might do this are:

- ✓ All of my real property goes to my husband/wife.
- ✓ Half of my Wal-Mart Stock goes to my daughter Ramona Jones.
- ✓ The other half of my Wal-Mart Stock goes to my granddaughters Rachel Harris and Elizabeth Stone to be divided 50/50 based on fair market value.
- ✓ All of my savings account goes to my children to be divided equally among them based on fair market value.
- ✓ My entire pension fund goes to the First Baptist Church of Jonesboro.
- ✓ Real Estate located at 288 Jones Street, Harrisburg, AR goes to my loyal friend Sarah Smith of 123 Pine St., Harris, AR.

Property that you do not specifically gift to someone goes into a "pot" called **residue**. The next section deals with what you want done with these "leftovers". This can be to one person or to a group of people - it is up to you. See the examples in instruction 9 on ways you might want to do this.

Generally, residue is left to one person outright, or is divided by value of the property to more than one. **For example**, you could leave half of the value of the residue to your children to be divided equally among them, with the remainder going to your husband. This would give husband 50%, and kids 50% total. **KEEP IT SIMPLE** because a disagreement among who gets what of your residue could result in everything being sold and the money from the sale being divided. If this is what you want you can say so.

11 Section Fifth allows you give things to children under 18 without the court having to appoint a guardian. Read over it.

12 Section Sixth tells the court what powers you give the Executor and Trustee. This is generally based on state law, so if you want to change these powers you should seek the advise of an attorney.

13 Section Seventh tells your estate to pay the taxes that you have due. If you have a large estate (over $500,000) you should see an attorney.

14 Last, get together with at least 2 people who are over 18 and who are not related to you or are not getting anything in the Will. It is better not to choose people who are likely to die before you because if there is a dispute in your Will they may be called to testify to your wishes. In front of these two people you should:

A. Read the Will out loud or have it read to you.

B. Initial at the bottom of each page in the space provided to show that you have read that page and that you understand the terms of the Will on that page.

C. Then say the words " I execute this Will as my Last Will and Testament at _____ (city and state where you are at that time), on this ___ day of ____ (month), in the year _____." I know this sounds odd, but this is a serious occasion and must be treated as such.

D. Fill in the blanks provided for location and date.

E. **Sign the Will** in front of the witnesses. It cannot be stressed enough that your witnesses be able to see and testify to everything that you do.

F. In the Attestation Clause, fill in the county in which you live and then put your name in the first blank.

G. Have the witnesses sign the Will and give their addresses.

H. Then, take your witnesses to a notary public and have them fill out the PROOF OF WILL and sign it. The notary will then sign and notarize it.

I. **Make several copies of your will** and its attached property list, and the Proof of Will. Take one copy of each to the COUNTY CLERK'S OFFICE and file them. This will only cost a few dollars and will protect your will. **Note** that if you ever change your Will you should file the new Will also.

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This fact sheet is given to you as a guide to help you generally understand the way wills are handled. Local courts interpret things differently. The information and statements of law contained in this fact sheet are not intended to be used as legal advice. Before you take any action, talk to an attorney and follow his or her advice. ***Always do what the court tells you to do.***

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LAST WILL AND TESTAMENT

OF

_____

I, _____, of _____, do make, publish, and declare this to be my Last Will and Testament, hereby revoking all prior Wills and Codicils at any time heretofore made by me.

FIRST
EXECUTOR, TRUSTEE, AND GUARDIAN

I hereby nominate and appoint the following persons and/or institutions to serve in the respective capacities set forth below:

(a) I appoint _____, as Executor of this, my Will. In the event that he is unable or unwilling to serve in that capacity, then I hereby appoint ,_____, as successor Executor.

(b) I appoint _____, as Guardian to our child(ren) _____ and to any subsequent children born to me. In the event that he is unable or unwilling to serve in that capacity, then I hereby appoint _____. If both are unable or unwilling to serve in that capacity, then I appoint, as successor Guardian to my children.

(c) I appoint _____ as Trustee of any trusts created herein or as a result of this, my Will. In the event he is unable or unwilling to serve in this capacity, then I hereby appoint _____, as successor Trustee.

I direct that my above-named nominees shall serve without bond.

Sample

SECOND
CONSTRUCTION

In carrying out the provisions of this, my Will, my Executor and/or Trustee, as the case may be, shall observe the following rules of construction:

(a) Throughout this Will the terms “child” and “children” shall refer to any child born to me or adopted by me.

(b) Throughout this Will the terms “child” and “children” shall also mean and refer to any children born or adopted after the execution of this, my Will.

(c) Whenever determining the term "descendants" in this Will, adopted children of any person will be deemed to have and shall be given exactly the same status as natural born children, provided that the adoption occurred, or occurs, at a time when the adopted person was, or is a minor.

(d) Throughout this Will the singular shall be deemed to include the plural and the masculine gender the feminine and vice versa.

(e) This Will has been executed in, and shall be construed under the laws of the State of Arkansas unless otherwise provided herein.

(f) In construing the provisions of each trust or trust fund created from or resulting from this Will, my Trustee shall resolve any doubt as to the payment of income and principal from each trust, within the limits recited in the provisions relating thereto, in favor of the beneficiary or beneficiaries thereunder. Furthermore, it is my wish and direction that 6the support, maintenance, and education provisions recited in any Trust created shall include, but shall not be limited to, expenses reasonably incurred by the beneficiary or beneficiaries of each trust for medical and hospital care, in connection with any emergency or untoward circumstances, and for college, vocational school, and public or private school education.

Sample

THIRD

SPECIFIC BEQUESTS

I hereby give and bequeath all of my interest in and to the following items as set forth below:

(a) See the attached list which I hereby incorporate into my will for specific bequests of tangible personal property.

(b) Any interest in real property that I own at the time of my death, shall go to _____ if living 60 days after my death. In the event that _____ is not living 60 days after my death, then the real property shall go to _____. The recipient shall take the property including any and all of its individual encumbrances.

FOURTH

RESIDUE

My Executor shall distribute the rest, residue and remainder of my property and estate, of whatever kind and wherever situated, to_____, if living 60 days after my death. If_____ is not living 60 days after my death, then my Executor shall distribute the rest, residue and remainder to _____. The recipient takes the property including any and

all of its individual encumbrances.

FIFTH

PAYMENTS TO PERSONS UNDER TWENTY-ONE OR INCOMPETENT

Notwithstanding any prior provision herein to the contrary, whenever pursuant to the provisions of this Will, all or any part of my estate or of the principal of a trust or trust fund would be distributed outright to any person at an age younger than 21 or who has been adjudged incompetent, that same property shall immediately vest and be held in a separate trust for such person to be set up by the Executor and managed by a Trustee as listed in Paragraph FIRST until such a time as that person has reached the age of twenty-one or is adjudged competent. The Trustee may at his sole discretion distribute to the beneficiary any part or all of the net income and principal of such trust no less than quarterly for such child to be maintained, supported, and educated in a manner to which they have become accustomed during my lifetime. Any undistributed net income shall be added to principal at least annually. When the beneficiary attains age 21, the Trustee shall distribute the remaining assets of such trust to such beneficiary. If the beneficiary dies before such distribution, the Trustee shall distribute the remaining assets of such trust to such beneficiary's estate.

SIXTH

POWERS

Sample

My Executor and/or Trustee, and their successors, shall have all the powers authorized by A.C.A. 28-69-304, as amended from time to time, which is by this reference thereto incorporated herein and made a part hereof as if fully set out. This power is over all the assets in my estate, with the right to do anything I could do if living, including but not restricting them to the abilities to invest, sell, mortgage, lease, dispose of, and distribute all property, real and personal, when and upon whatever terms and conditions my Executor and Trustee deems appropriate.

SEVENTH

EXPENSES AND TAXES

I direct my Executor to pay all estate, inheritance and other taxes, and all expenses of my last illness, including funeral expenses. These payments shall be made out of the residue of my estate.

EXECUTED at _____, this _____ day of _____,____.

_____

Signature

ATTESTATION CLAUSE

We, the undersigned witnesses to the Will of _____, hereby certify that we subscribed our names in the presence of the Testator, and in the presence of each other at the request of the Testator, he having declared this to be his Last Will and Testament, and having signed his name in our presence.

Witness 1. Name: _____

Address:_____

_____

Witness 2. Name: _____

Address:_____

_____

PROOF OF WILL

STATE OF ARKANSAS }

COUNTY OF _____}

Sample

We, _____, _____, and

_____, on oath state that we are the subscribing witnesses to the attached written instrument dated the _____ day of _____, 2000, which purports to be the Last Will and Testament of _____. On the execution date of the instrument, the Testator, in our presence, signed the instrument at the end thereof and declared the instrument to be her Will, and requested that we attest to the execution thereof whereupon, in the presence of the Testator, each of us signed our respective names as attesting witnesses. At the time of the execution of the instrument, the Testator appeared to be over eighteen (18) years of age, of sound mind and body, and acting without undue influence, fraud or restraint.

DATED this _____ day of _____, 2000.

_____

_____

_____

Subscribed and sworn to before me on this _____ day of _____, 2000.

_____

Notary Public

My Commission Expires:

_____

(S E A L)

Sample