

Sample Forms & Clauses for Basic Wills & Trusts



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Disclaimer

The sample forms and comments in this book are presented merely to illustrate the various possibilities in drafting of simple Wills and trusts. They are designed to give the drafting attorney a starting point and some food for thought. They should not be adopted blindly or used in a mere “fill-in-the-blank” fashion.

It remains incumbent on the drafting attorney to thoroughly research the statutes, cases, and other laws affecting Wills, trusts, and probate in his or her own jurisdiction. The drafting attorney also should become very familiar with the particular facts of his/her client’s situation and customize documents to meet the client’s unique needs.

These forms are not worded with any particular State in mind. The State, county, and city names used in the forms are used merely as illustration and are not meant to infer that the form comports perfectly with the laws, customs, or practices of the named State.

The names of persons used in these forms are all fictitious (drawn mostly from popular television shows of the past and present!). No connection to real persons is to be inferred.

For the most part, tax consequences have not been taken into consideration in the drafting of these illustrative forms. The seminar accompanying this book is devoted almost exclusively to the subject of *non-taxable estates*, and thus it remains incumbent on the user of these forms to investigate a client’s possible tax consequences and the further drafting and revision of these forms that might be dictated by the particular tax situation.

These forms are intended for the use of licensed attorneys and paralegals working under close supervision of a licensed attorney. Non-attorneys should not adopt or use any of the forms in this book without extensive consultation with a competent attorney.

Many of the forms in this book have been adapted with permission from forms in the seminal form book, *Current Legal Forms* by Rabkin & Johnson. *Current Legal Forms* has long been recognized as the best form book for transactional law documents, including leases, contracts, and Wills. If you have an active transactional practice, we recommend you make an investment in *Current Legal Forms*. You can order them from the publisher, Matthew Bender or through the LexisNexis Bookstore.

Form # 1
COMPLETE WILL #1: UNMARRIED TESTATOR

Key Provisions:

- A) Specific gift in testamentary trust for charity
- B) Remainder (residue) to relative
- C) Specific instructions on recipients of particular items provided in separate list
- D) Powers of executor stated briefly (incorporating by reference powers conferred by State statute)
- E) Self-proving attestation

Comments to Form

Testamentary trusts:

This rather simple Will illustrates provisions that might be found in a single person's Will. It demonstrates the ease with which a Will can establish a testamentary trust. Testamentary trusts are often desirable because they give the testator some level of assurance that, upon his death, his property will be utilized wisely and in a supervised manner. This insures that the property will be used in a manner intended by the testator. Such simple testamentary trusts are often used to insure that children -- even adult children -- do not squander an entire inheritance because of financial irresponsibility (or simply because of inexperience in handling large sums of money). (See Form #17 for further discussion and samples of testamentary trusts for children and other relatives.)

The testamentary trust in this particular Will form illustrates another desirable function of such trusts - they give the testator some sense of immortality. Indeed, by conveying property in trust to a charitable foundation, bank, etc. (i.e. an institution with an unlimited lifespan), a person can fairly simply create a gift that leaves a true long-term legacy. These simple trusts can provide for gifts to be made to a chosen charity or church on a periodic basis in the testator's name -- long after the testator's death. (Take note of Benjamin Franklin's Will. It created testamentary trusts which resulted in annual scholarships to children in Philadelphia and Boston -- as well as libraries and museums -- for two hundred years after Franklin's death. The trusts were terminated -- by Franklin's own instructions -- in 1991.) Also, there is a "charitable exception" to the Rule Against Perpetuities. Thus, such trusts can continue to operate indefinitely.

Separate list of instructions explaining distribution of personal property:

Also, in this form, the testator chooses not to list lots of specific gifts in the Will. Instead, she states in the Will that a separate list will be prepared that will provide more

specific instructions on “who gets what.” (See Article III of this form.) This is a popular practice, but it should be avoided where possible. The law in most states provides that such separate lists usually will be non-binding and thus may be ineffective in avoiding a family squabble over particular heirlooms or other desirable pieces of property.

Debt provision:

Note that the last sentence of Article I provides that each and every beneficiary of the Will shall bear his or her proportionate share of paying the debts and expenses assessed against the testatrix or her estate. Many Will forms in use today fail to give any such instructions about the source of funds to pay estate debts. This is a serious error since, in the absence of instructions, state law will dictate the order in which estate property is liquidated for purposes of paying off estate debts (often resulting in some heirs losing a disproportionate amount of their anticipated inheritance). Thus, the Will should direct *how* the debts will be paid, although too many Will forms do nothing more than state that debts *should* be paid (a somewhat superfluous instruction, since state law will mandate that probated debts be paid off the top regardless of whether the Will gave “permission” to do so).

Powers of executor:

The succinct statement of executor powers set forth in Article VII of this form should work well in most circumstances. This provision simply incorporates by reference the statutes of the testator’s home state. The probate statutes of nearly every jurisdiction confer on executors -- by operation of law -- virtually every power he/she might need in the course of administering the estate.

Nonetheless, some lawyers like to spell out every conceivable power an executor might need (including some rarely used powers). If such verbosity and specificity is deemed desirable, Form #20 of this book provides a lengthy laundry list of powers for an executor and for the trustee of any testamentary trust that might be created by the Will.

Self-proving attestation

The end of the form also provides one example of an attestation section that can make the Will “self-proving” (i.e. ready to probate). This self-proving element merely means that the signatures of the attesting witnesses have been notarized at the end of the Will -- thereby creating the kind of affidavit that will be needed when the time comes to submit the Will to probate.

FORM

LAST WILL AND TESTAMENT
OF
JANE ROE DOE

I, Jane Roe Doe a resident of Hattiesburg, Forrest County, Mississippi, being over the age of eighteen (18) years and of sound and disposing mind and memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils heretofore made by me.

ARTICLE I

DEBTS

I direct that all of my just debts duly probated against my estate which I owe at the time of my death, all expenses of my last illness, all funeral and burial expenses (including the cost of a suitable monument at my grave) and the cost of administration of my estate be paid as soon as practicable after my death. It is my intention, however, that nothing in this Article of my Will should be construed as creating an express trust or fund for the payment of debts and expenses which would in any way extend the normal statute of limitations for the payment of my debts or enlarge upon my statutory duty to pay debts. It is my intention and instruction that all beneficiaries under this Will shall bear a share of the burden of such debts and expenses that is proportionate to their share of my estate under this Will.

ARTICLE II

TAXES

I direct that all estate and inheritance taxes and other taxes in the general nature thereof (together with any interest or penalty thereon) which shall become payable upon or by reason of my death with respect to any property passing by or under the terms of this Will or any Codicil to it hereafter executed by me, or with respect to the proceeds of any policy or policies of insurance on my life, or with respect to any other property included in my gross estate for the purpose of such taxes, shall be paid by my Executrix out of the principal of my residuary estate.

ARTICLE III

DISTRIBUTION OF PERSONAL EFFECTS

I hereby direct my Executrix to distribute my personal effects in accordance with the terms of a list which shall be found with my Will. Any personal effects not mentioned, directly or indirectly, in this list shall be treated as part of my residuary estate and accordingly shall be distributed to my nephew, Rodney Roe, pursuant to the terms of Article V below.