

# **DAVENPORT'S ARKANSAS WILLS AND ESTATE PLANNING LEGAL FORMS**

**written by attorneys  
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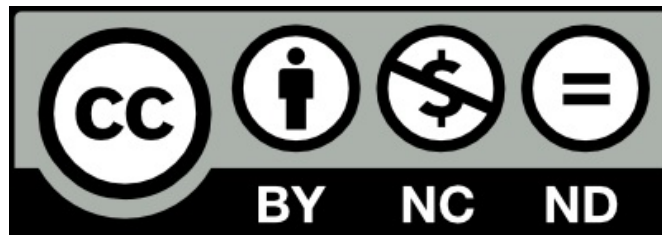
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# CHAPTER 1

## BOOK BASICS AND LIST OF FORMS

### ESTATE PLANNING CONTROLS THINGS IF LATER ABSENT, SICK, OR DEAD

From Davenport Publishing and written by attorneys this book is about Estate Planning in Arkansas. This is about doing legal documents to control health care, property, money, children, funeral, and more if later absent, sick, or dead. People have a right to control their health care, property, money, and family, so judges, doctors, and others basically ask: “Based on what a person wrote what did they likely want done?”

### ESTATE PLANNING MOSTLY IS DOING SIMPLE THINGS IN 3 AREAS

Estate Planning is mostly doing simple things in 3 areas: Will Related, Health Care, and Giving Power. There are 11 ready to use Arkansas legal forms in this book. Many people use just a few of these legal forms.

#### WILL RELATED FORMS

**Form 1. Will (Standard)** – a Will (also called a “Last Will And Testament”) lets a person control things after their death like who gets money and property, who is Executor, and if easier legal options can be used.

**Form 2. Will (Guardian)** – Will with part added to name a Guardian to care for a minor child under 18 if needed (like if both parents later aren't available) and also if needed manage a child's money and property.

**Form 3. Handwritten Will** – Will which if all handwritten by a person can skip need for 2 witnesses.

**Form 4. Proof Of Will** – form sometimes done with a Will to later help prove it was properly signed.

**Form 5. Tangible Personal Property List** – lets person easily add to a Will more gifts to occur after death of tangible personal property like furniture, jewelry, vehicles, art, electronics, home tools, and clothes.

#### HEALTH CARE FORMS

**Form 6. Durable Power Of Attorney For Health Care** – lets a person name someone to be Agent to control health care if the person is later incapacitated and also lets person give some instructions.

**Form 7. Living Will Declaration** – lets a person do serious act of saying stop most health care if later they are incapacitated and doctors later think the health situation is very bad and more care won't help.

**Form 8. Physician Orders For Life-Sustaining Treatment** – does serious act of saying to paramedics and others immediately from now on do not try health care listed like C.P.R., defibrillation, or tube feeding.

#### GIVING POWER FORMS

**Form 9. Statutory Power Of Attorney** – lets power over money, property, and more be given to a trusted person so they have power to do things, like use accounts, pay bills, get records, and sell property.

**Form 10. Power Of Attorney For Minor** – lets a parent give power to someone over a minor child under age 18 to use if needed including health care, school, and home issues.

**Form 11. Declaration Of Final Disposition** – lets a person give instructions and name someone to control issues about their dead body like funeral, cremation, and burial matters.

## **ARKANSAS LAW ON ESTATE PLANNING COVERS MOST PEOPLE HERE**

This book is only for Arkansas since Estate Planning law and legal documents vary between states. Usually a state's Estate Planning law applies if a person's primary residence is here (often called "domicile"). Many judges say residence occurs if a person lives in a place and for a moment has no clear plans to leave. Later plans to move don't matter till people actually move. Note, people can stay under their previous state's Estate Planning laws after they move from it if people have some plans to leave any new state eventually. For example, people who move to a new state for months or more for travel, school, work projects, or the military often can keep legal ties to their old state. Immigrants here of any kind can do Estate Planning. For health care people often do legal documents to match the state a hospital or other health facility is in.

## **BOOK IS SHORT, HAS FORMS TO QUICKLY SEE, AND USES EMPHASIS**

This book is short and may read rough but can be read fast. Long books often lead to misunderstanding of the basics and skimming. This book has legal forms people can quickly see. For emphasis paragraph titles, underlining, and boxes are used. This book capitalizes some legal words like Will, Testator, and Agent but this is optional. To save space some small words are skipped and end quote marks put before punctuation.

## **THIS BOOK COVERS MAJOR LEGAL IDEAS AND SHOULD SUIT MOST PEOPLE**

This book covers the big U.S. legal ideas on Estate Planning and most ways Arkansas law is different. This book and its forms can't cover every issue that matters to everyone but it should suit people without any strange situations or wishes about Estate Planning, which is likely most adults (maybe well over 80%). Strange situations or wishes that may need more research or a lawyer include: a) unusual wishes for gifts, b) wealth over \$5 million, c) big medical concerns including extreme age, d) property or money going to a person with disability or special needs, and e) wish to move or hide assets to qualify for government help.

## **LEGAL FORMS CAN HELP MANY AND THIS BOOK HAS "STANDARD FORMS"**

Studies on Estate Planning show a surprising 60% of adults have not done anything, 19% used a lawyer for this, and 21% used legal forms. Legal forms are good at most things involved in Estate Planning and can make binding legal documents that judges, doctors, families, banks, and others legally must follow. Instead of legal forms lawyers can be used for Estate Planning but it can be costly, take months of work, and they can make mistakes. In life people often weigh costs, benefits, and risks and often pick a cheap option. Also, often a hospital, state agency, charity, or state legislature has made a form most people use and call the "standard form", and doctors, judges, and others may not like to follow anything else even if a lawyer wrote it. This book does provide the standard form for Arkansas in a subject area if it exists.

## **ESTATE PLANNING OFTEN IS NOT VITAL AND WORTH SPENDING MUCH ON**

Despite what many people think Estate Planning often does not greatly change the costs, taxes, delays, and work involved in these areas, so it often is not vital and worth spending much money and energy on. Benefits seem very low for young people even if they're parents since only about 4% of people die by age 50, and only about 0.13% of children under 18 had both parents die to need big legal help. *See Social Security Tables: Felicitie Bell; Parent Mortality Census SIPP Paper #288.* Instead of costly Estate Planning many people buy life insurance, like some people pay yearly for \$100,000 term life with no exam ("simplified issue").

## **LEGAL DOCUMENTS MAY NEED TO BE “WITNESSED” OR “NOTARIZED”**

To be legally valid and enforceable some legal documents need to be “witnessed”, which is someone watching the person doing a form sign and the witness signs too. Some legal documents need to be “notarized”, which is a person who is a “notary” see signing and then use ink stamp and they sign too. Notaries (also called a “notary public”) are at some banks, brokers, insurance agents, courts, law offices, libraries, mailing or copying centers, and government offices. Using a phonebook to call may help people find a helpful notary. In legal documents the words “subscribe” or “execute” means a person signed it, and “acknowledgment” means a person somehow showed a 2nd person like a notary or a witness they intended to do a document. If a person signs a legal document in a language they don’t understand it is still binding.

## **ANYONE CAN FILL IN MOST OF FORM, AND LATER TRY TO KEEP ORIGINAL**

Parts other than signatures can be filled in by a person not doing the form. Most people try to keep the original and hand out copies. Some people get signed many copies of a form to have these real inked pages.

## **SOME LESS COMMON OR LESS USEFUL FORMS ARE NOT IN THIS BOOK**

This book skips some possible but less common or less useful documents.

- A “Codicil” can modify a Will but it is easier and legally safer to just rewrite the whole Will.
- Some people do a “Pet Trust” to help a pet, but it’s easier to just give money in Will to person given a pet.
- Though separate forms exist most people handle Organ Donation in drivers license or state ID paperwork.
- Some people do a “Revocable Living Trust” so a Trust entity with a Trustee holds property or money during their life, usually done to after death have faster transfer of things and avoid small delay, costs, or work of others (by “avoiding probate”). But this is rarely done as it requires immediately moving most of a person’s things to a Trust causing maybe years of hassle, mostly to avoid later small work for people getting things.
- “Childrens Trust” papers can be done (like as part of a Will) so at a death a Trust gets money or property for a minor child to manage until 18, but this is uncommon due to possible cost and hassle, since it rarely matters (as this book explains), and since most Wills already arrange other legal help for young children.

## **PROBABLY DO NEW FORMS IF DIVORCE, MARRY, HAVE CHILD, OR MOVE**

Divorcing, marrying, having a new child, or moving to a new state can have big legal effects, and if any of these events occur it is recommended people do a new Will and other Estate Planning papers soon. To help most states say a Will from another state is still valid if people move but this is not always certain.

## **MOST WILLS HAVE A “MISCELLANEOUS” PART WITH HELPFUL LANGUAGE**

Most Wills have a “Miscellaneous” page with paragraphs of legal language to avoid some legal problems. This can help if later legal problems occur and a person doing a Will need not understand these paragraphs.

## **NO FEDERAL OR ARKANSAS TAX IS USUALLY OWED DUE TO A DEATH**

Usually no tax is owed as a result of a death, including no estate, inheritance, death, or similar taxes. This is because the Federal Estate And Gift Tax only starts when a tax credit is used up covering \$12.92 million a person in 2023 or later. At the state and local level Arkansas no longer has any inheritance or estate taxes that may apply. Most people don’t need to worry about more tax being owed due to a death.

# **CHAPTER 2**

## **TERMS, PROPERTY LAW, AND HELPFUL INFORMATION FORM**

### **THERE ARE BASIC TERMS AND IDEAS IN ESTATE PLANNING**

Some legal terms and ideas are basic to Estate Planning.

- “Estate Planning” is about people doing legal documents to control things if later absent, sick, or dead. After a document is done people are mostly free to sell or transfer property, instruct doctors, or change forms.
- A “person doing a legal document” and “doing a form” means the form is for and affects that person.
- A “Will” or “will” (this book uses upper case “W”) is a legal document done to control issues after death. The phrase “Last Will And Testament” is used since a “Testament” long ago was a small document done along with a Will to do some things. If no Will is done a person is described as being “intestate”.
- A person who died is called the “decedent” or “deceased”. A person getting a Will gift is called “recipient”, “beneficiary”, or “heir” if related (they “inherit”). “Survive” or “surviving” is to be alive after someone died.
- A person named to handle and do things after someone’s death is usually called an “Executor”, but if a judge has to pick someone they are called an “Administrator”. The term “Personal Representative” covers both these terms and is now the common term used in Arkansas for the person doing things after a death.
- A person doing a Will is called “Testator” or “Will maker”. Before about 1990 a woman Testator was called a “Testatrix” and woman Executor called an “Executrix” but this is no longer often done.
- “Probate” is a legal process to do things after someone’s death like transfer property, handle creditors, and authorize a Guardian. Due to nice changes in law probate is now often informal, faster, and less costly.
- “Property” is either: 1) “real property” which is land and buildings (“real estate”), 2) “personal property” which is things not real property, like cash, accounts, stocks, tools, clothes, cars, jewelry, and art, or 3) “fixtures” which are things tied to real property (like fences, posts, lighting, and wired-in appliances).
- Legal documents to control health care things are often called “Advanced Directives”.
- In Arkansas a person under 18 is usually called a “minor” and often a parent or guardian helps them. A minor or other person not reasonably able to make wise decisions lacks “capacity” and is “incapacitated”.
- Forms giving power to someone are often called “Power of Attorney” forms. The person giving power is called the “Principal” and person getting power is called the “Attorney-in-Fact” or “Agent”.
- State law is called the “Arkansas Code”. A law is called a “statute” or “section” often shown by “§” or “s”. A law can be referred to in a few ways, for example like: “Ark. Code § 28-25-101”. A legal form written in state law for people to find and use if wanted is usually called a “statutory form”.



## **“ESTATE” MEANS PROPERTY OF DECEDENT OR ENTITY HOLDING ITEMS**

First, the “estate” or “probate estate” means all property and money of a dead person that at death or soon after didn’t somehow legally automatically go to new owners. Second, estate is also the word for the temporary entity run by an Executor to do things after a death (it’s like a small corporation). A dead person’s money and accounts might be renamed or moved to a bank under an estate name, like “Estate of Ed Hud”.

## **PERSON CAN ONLY GIFT IN WILL WHAT THEY OWN AT DEATH**

A person can only gift by Will things they own at death so people should research what they own. Basically by law a person usually owns all they earn as wages and salary, owns their share of income and profit tied to property they own, and owns or partly owns any things their money buys or improves. And for property with “title” documents (real estate or vehicles) or where there is a “listed owner” (like accounts) the named persons are usually the legal owners unless evidence shows special circumstances. Note, a person during life can sell property, make gifts, or transfer things even if they are named in a Will, so people should consider if they already sold or gave away property they also name in a Will gift.

## **THINGS OWNED IN SPECIAL WAYS MAY LIMIT GIFTING IN WILL**

A person should consider if they own real estate or other property in special ownership ways which may limit gifting by Will. Laws vary in different states but some common special ways of ownership are:

- “joint tenant with right of survivorship” or similar legal options, so then property transfers automatically to the other named owners regardless of a Will, which in some states is often how the family house is held (in Arkansas most married people do papers like a deed so if 1 spouse dies the 2nd spouse gets a house).
- papers say a “life estate” exists, so then if life of someone ends the other people in papers get item, and
- “Trust property” occurs if paperwork made a Trust entity and property was actually transferred into it or is set to occur, so then the Trust papers control where things put in the Trust go on someone’s death.

Plain “joint ownership” with many people owning a thing can occur if people do joint papers, all agree to it, buy with joint funds, or if a gift was to many. Wills can gift joint property, like “I give my half of boat to Ed Hu”.

## **NON-PROBATE TRANSFERS THAT HAPPEN AUTOMATICALLY IGNORE A WILL**

Money or property of the deceased that for some reason automatically transfers on death or soon after to new owners is called “non-probate property”. Such things transfer as arranged even if Will gifts name the same items. Examples of non-probate property are: a) a “designated beneficiary” form was done that names people to get an account or investment, b) transfer-on-death accounts, and c) real property is held by 2 people as “joint tenants with survivorship” or similar so at a death the surviving person gets things. Also property in a Trust usually ignores a Will and transfer as Trust papers say. Life insurance often goes to a named beneficiary. Trying to do non-probate transfers for all things is called “avoiding probate”, but few people try this since it can cause years of hassle, benefits are small, and often a small thing is missed. When doing a Will a person should consider non-probate transfers that will occur automatically on death and consider what property and money will be left to transfer by Will.

## **“HELPFUL INFORMATION” FORM CAN TELL FAMILY AND FRIENDS THINGS**

People can do a “Helpful Information” form that financial planners, lawyers, and banks suggest so friends and family after a death know things. People can staple records or lists to this. See form on next pages.

# ESTATE PLANNING HELPFUL INFORMATION

For more space attach copies of form or blank pages. Keep pages by Will or other place for Executor or family.

1. Personal Information (Name, Birthdate, Social Security number, special family details, other):

2. Real estate, vehicles, and other major tangible property (especially if people may not find them):

3. Non-tangible assets like stocks, accounts, investments, loans owed you, and business interests:

4. Possible income or insurance like pensions, retirement, disability, insurance, or contracts:

5. Debts owed by you like credit card, loan, student loan, mortgage, car loans, and accounts payable:

6. Names and information of professionals used (attorneys, accountants, brokers, doctors, others):

7. Computer passwords and helpful files, document places, and safes or safe-deposit boxes code/key:

8. Other helpful things, wishes for funeral, special requests, and last messages to family and friends:

# CHAPTER 3

## WILL BASICS

### WILL LETS “TESTATOR” CONTROL THINGS AFTER DEATH

A Will is done by a person to control some things after their death. A person doing a Will is called the “Testator” or “Will maker”. A Testator when signing must be at least 18 years old, of sound mind (rational with sufficient memory), and not be under duress (unfair pressure or threat). Most people can do a Will.

### SIGN WILL WITH 2 WITNESSES

#### WILL MUST SHOW IT’S A WILL, BE DECLARED A WILL, AND BE WITNESSED

To be a valid Will in Arkansas a written document must show it is meant as a Will by its wording or title, the person doing the Will must declare aloud to witnesses it is their Will, and person doing the Will must sign at the Will’s end in front of 2 witnesses who sign too. A “Video Will” or “Audio Will” mostly has no legal effect.

#### WITNESSES SHOULD BE PEOPLE AT LEAST AGE 18

A person to witness a Will must be at least age 18. It is not required but preferable a witness not be old or live far away, and usually not be named in the Will as Executor, Guardian, or to a similar job in the Will. Often used as witnesses are friends, neighbors, strangers, or family.

#### WILL GIFTS TO A WITNESS LIKELY WON’T BE CARRIED OUT

Will gifts or other Will benefits to a person signing a Will as a witness usually are invalid and won’t later be carried out unless there are 2 other sufficient witnesses. A small exception says a witness can get up to the amount they’d get by intestate law which applies if there were no Will. A Will witnessed by people the Will makes gifts to is still totally valid and treated normally except for maybe not later carrying out gifts going to a witness. To avoid this issue often witnesses are chosen who won’t benefit directly by a Will.

#### TESTATOR MUST ALOUD “DECLARE” THE WILL AND ASK WITNESSES TO SIGN

The law says a person should “declare” a Will and ask witnesses to sign it. Often a Testator says a thing like, “My name is \_\_\_\_\_ and this is the Will I want and do voluntarily and want people to witness”. Some Testators chat with witnesses longer about the Will to show they understand it and are of sound mind.

#### TESTATOR AND 2 WITNESSES SIGN THE WILL WHEN TOGETHER IN 1 ROOM

The person doing the Will should sign it with 2 witnesses who then also sign the Will. All people should be in 1 room and see others sign. Witnesses or Testator showing each other an ID is somewhat common. A Testator or witness usually use their full legal name in a Will unless they dislike it and very rarely use it. The Testator need not initial Will pages. The witnesses usually only read the 1 paragraph they sign below. People who can’t move a hand to sign a Will should consult a lawyer.

#### KEEP SIGNED WILL IN SAFE PLACE IT CAN BE FOUND AFTER A DEATH

People should keep a Will so it can be found within days of a death, like in a desk, drawer, safe, or less often a safe deposit box. It can be given to a person to hold. It may help to tell others how to find or get a Will. In Arkansas people also can file a Will during their life at the Circuit Court of their local county for safekeeping.

## **CANCELING OLD WILLS IS USUALLY NOT A PROBLEM**

So a new Will is followed old Wills should be canceled (“revoked”) but this is easy and rarely a problem. A new Will usually quickly says old Wills are revoked to cancel them, and all this book’s Will forms say this. A few people revoke an old Will by writing “void” or “cancelled” or “X” on it, preferably with a witness to this. Usually crossing out just part of a Will has no effect, and revoking a Will doesn’t bring back an earlier Will.

## **MOST WILLS SAY TO SKIP COSTLY BOND FOR EXECUTOR AND OTHERS**

Most Wills helpfully say no “bond” or “surety” is required for any Executor, Guardian, or similar people. This is insurance bought from a company to insure against misconduct. But the person writing a Will usually doesn’t want this since the persons named are trusted and buying insurance uses up estate assets.

## **MOST WILLS SAY PEOPLE MAY LATER DO “INFORMAL PROBATE”**

Most Wills say people may later do “informal probate” which can avoid later costs and delays. In informal probate usually just 1 short hearing at court is required and probate is usually done in well under 1 year.

### **WILL NAMES AN EXECUTOR TO DO THINGS AFTER DEATH**

#### **WILL NAMES SOMEONE AS “EXECUTOR” TO DO THINGS AFTER A DEATH**

Usually a Will names someone as “Executor” to act after a death like carry out gifts, handle debts, and do probate. The law gives Executors many legal powers and rights to do actions like get records, handle creditors, and collect property and money and give it to new owners. If a Will fails to name an Executor a judge can pick someone, but family may argue about who to suggest. Will gifts can go to the Executor. Note, the term “Personal Representative” and not “Executor” is increasingly used in Wills for the person doing things after a death, but basically these terms mean the same thing.

#### **EXECUTOR CAN BE PAID AND ESTATE PAYS FOR EXECUTOR’S EXPENSES**

Arkansas law has a fee schedule saying usually an Executor can ask to be paid about 3% the value of personal property in the estate, and also a percentage of real estate they actually have to do work to handle. Some people feel this is too much and add a line to a Will saying to not pay them. But often Executors skip asking for any pay to not owe income tax and leave more money to carry out Will gifts. Leaving pay an option for an Executor may let a relative get money even if large creditors are asking to be paid. Any lawyer hired by an Executor is usually paid hourly or a fixed sum. Expenses an Executor has like for probate costs, lawyers, insurance, repairs, mortgage payments, utilities, and similar things is paid for using estate assets.

#### **EXECUTOR IS PERSON AT LEAST 18 AND SECOND PERSON RARELY NEEDED**

By law a person to be Executor must be 18 or old and they usually should not have a bad criminal record including any felonies. If a person is not an Arkansas resident they must name a local person to get mailing of legal papers. Naming 2 people to both be Executor is allowed but rare due to the risk of disagreements and delays, and since any 1 person named should be trusted. Some people do name a 2nd person to be Executor if the 1st person is later not available but most skip this since it’s rarely an issue, if a problem is seen usually a new Will can be done, or a judge can always act. To add a 2nd person to serve as a fallback Executors words can be added to a Will, like: “or if they’re reasonably unable to serve I name \_\_\_\_\_ to serve.

# **CHAPTER 4**

## **WILL GIFTS INCLUDING RESIDUE CLAUSE**

### **MAIN USE OF A WILL IS TO SAY GIFTS TO HAPPEN AFTER DEATH**

Most people use a Will mainly to say what happens to their property and money after their death, usually by writing down various Will gifts to occur when they die. Verbal and even writings about this are not usually valid if not in a proper Will. A Will can control property acquired after it was signed.

### **GIFTING IN A WILL USING SIMPLE WORDS OFTEN IS BEST**

Making gifts in a Will using simple words is often best, using words like “I give to” and “I gift to”. This is legally fine and avoids confusing legal words like “bequest”, “devise”, and “legacy” which few people know.

### **A PERSON IS MOSTLY FREE TO GIFT THEIR THINGS AS WANTED**

A person is mostly free to give at death their money and property as they want. But creditors a decedent owed money, a spouse, and minor children under age 18 may have rights which this book later explains.

### **IN WILL CAN DO “SPECIFIC GIFTS” TO GIFT PARTICULAR PROPERTY**

Most Wills have “specific gifts” to gift particular things. Specific gifts can be any property, like “I give boat to Ed Blom” and “I give UBank account #84553873 to Sue Wu”. If a gift is not clear the law assumes all of a kind of thing is given, like “I give jewelry to Ann Po” means all jewelry. But gifting specific property can have surprises like value of items can change, or a Will gift may later fail to occur if property is not owned at death.

### **IN WILL CAN DO “GENERAL GIFTS” LIKE OF MONEY**

Wills can do “general gifts” where what is gifted is not particular property but can be flexibly chosen, like “I give 1 of my 3 cars to Ed Po” which lets an Executor pick which car. The usual general gift is money, like “I give \$5 to Ed Hill”. Money gifts are easy to write, let equal gifts be made, and are safer since specific items might not be owned at death. To carry out money gifts an Executor uses accounts or sells some property.

### **“RESIDUE CLAUSE” IS CATCH-ALL THAT HELPFULLY GIFTS ANYTHING LEFT**

Most Wills by their end have a Residue Clause to gift property or money not gifted or used in a Will or other way, often called a “catch-all” or “left-over” clause. The Residue Clause is covered later in this Chapter.

### **PROPERTY OR MONEY IN A “JOINT GIFT” GOES TO MULTIPLE PEOPLE**

The same property or money in a “joint gift” can go to many people to each get a part. For example, “I give boat and all hats to Ann Wu and Sue Han” means each person owns 50% of every item. People later can split things by agreement, or the Executor can decide how to divide things or can sell things and split the money. If a person in a joint gift has died their part usually is left to transfer under the Residue Clause.

### **CAN LEAVE SOME WILL GIFT LINES BLANK OR WRITE THINGS LIKE “SKIPPED”**

A person writing a Will can choose to not use some gifts lines in a Will legal form, like by just leaving them blank, writing things like “SKIPPED” or “NONE” in them, or using a computer to delete some gift lines. Judges and others usually do not care about neatness or empty spaces in Wills.

## **GIFT BENEFICIARIES CAN GET PERCENTAGE RATHER THAN EQUAL SHARE**

If a Will gift goes to multiple people the law assumes equal shares, but if wanted percentages can be used to make unequal gifts, like “I give boat 90% to Ed Wu and 10% to Joe Hud”.

## **IF PERSON IN WILL GIFT DIES IT CAN GO TO “LINEAL DESCENDANTS”**

A Will gift can say it goes to a person but if they don't survive the Testator then say the gift goes to the person's “lineal descendants”. Descendants are a person's children and grandchildren. Also, the term “per stirpes” is often used to say to give to each family branch equally. An example shows how this works:

A Will may say: “All clothes to Sue Wu but if they don't survive to their lineal descendants per stirpes”, and this means if Sue Wu has died and her son Ken Wu is living and her other son Ben Wu has died but left 2 children then, legally, by law Ken Wu himself gets 50% and Ben Wu's 2 children each get 25%.

## **AFTER A DEATH FAMILIES OFTEN LET PEOPLE TAKE ITEMS UNOFFICIALLY**

After a death many families all agree to unofficially let people take small items in ways a dead person mentioned, wrote on a memo or list or note, put on stickers, or would want, and this often is not a problem. If anyone objects a judge usually orders property and money be handed out as a Will and other legal things say -- but afterward people who got things can voluntarily re-transfer things to do what decedent wanted. This book covers later how a Tangible Personal Property Gift List can transfer things after death.

## **OPTIONS EXIST TO HANDLE RARE CASE PERSON IN A WILL GIFT DIES**

### **PERSON IN WILL GIFT USUALLY MUST SURVIVE OR GIFT DOES NOT OCCUR**

Though rarely an issue, many Wills like this book's Will forms say a person named in a Will gift must survive (live past) the Testator or the gift will not later occur unless gift language specifically says different. If survival isn't required like this then what occurs can be unclear (for many reasons like certain state laws). Most people if they see a person in a gift has died just re-do a Will or trust a Residue Clause to handle it.

### **SOME PEOPLE ADD “ALTERNATE BENEFICIARY” MAYBE FOR SPECIAL ITEMS**

Some people to handle if a person named in a Will gift dies maybe put for special items an alternate beneficiary, like for example: “I give oak table to Ed Wu but if they don't survive me to Ben Fox”.

## **IF PERSON IN WILL GIFT DIES IT CAN GO TO “LINEAL DESCENDANTS”**

A Will gift can say it goes to a person but if they don't survive the Testator then say the gift goes to the person's “lineal descendants”. Descendants are a person's children and grandchildren.

## **HELPFUL LAWS OFTEN REQUIRE PERSON SURVIVE 120 HOURS TO GET GIFT**

Laws in most states say a person dying within 120 hours of someone is seen as having died earlier, so often a Will gift to them is ignored. This avoids legal problems like need to know exact time of death.

## **RESIDUE CLAUSE GIFTING ALL LEFT IS MAIN WAY USED TO GIFT THINGS**

### **THE “RESIDUE CLAUSE” IS CATCH-ALL THAT HELPS GIFT ANYTHING LEFT**

Most Wills by their end have a Residue Clause to gift any property or money not gifted earlier in a Will or used in other ways. Things transferred this way is called the “Residue”. Many people gift most their money and property this way by intentionally not mentioning in a Will most things so the Residue Clause handles it. Using the Residue Clause to give things avoids need to describe things and has less legal risk. Many people with a spouse or young children mostly use a Residue Clause and don’t do many other gifts. After applying a Residue Clause if anything is somehow left then a decedent’s closest heirs get things (this is closest family).

### **USUAL RESIDUE CLAUSE HAS 2 PARTS**

A short 2 part Residue Clause is usual and is used in this book’s Will forms, and it has:

- 1) 1st space to name 1 or more persons to get things if they survive Testator (many name a spouse or closest family here), and if several people are named but only some survive then survivors split things, and
- 2) 2nd space to name persons to get things if all in the 1st space don’t survive (many people name next close family or friends in this space), and if a person in 2nd space has died their descendants get their share.

#### **EXAMPLE OF 2 PART RESIDUE CLAUSE:**

**“RESIDUE CLAUSE: I give money and property not gifted earlier:**

**A) to my husband John Paul Doe if they survive me, then**

**B) to Sam Doe my son, Beth Wu my daughter, and Greta Fisher my friend and if any of those just named do not survive me their part goes to their lineal descendants, per stirpes.”**

In this example if John Paul Doe has survived then he gets all things, but if John Paul Doe hasn’t survived and also Sam Doe hasn’t survived and he left 2 daughters then those 2 daughters split the 1/3 share of Sam Doe so get 1/6 each and other 2 persons in second part Beth Wu and Greta Fisher get 1/3 each.

### **PEOPLE CAN PUT SAME THING IN PARTS, OR SKIP PART, OR USE PERCENTAGE**

Some people put the same 1 person in both parts of a Residue Clause, to better ensure certain persons or if they later die their descendants get things. Or a person with no spouse may skip the Residue Clause 1st part and in the 2nd part put their children (including any who died who had a child), so all branches of a family get an equal share. Many people use percentages in the Residue Clause.

### **SOME PEOPLE CHANGE A RESIDUE CLAUSE TO HAVE 1 PART**

Some people change a Residue Clause to have just 1 part since this can gift more equally and be easier to understand. See *example in Appendix*. For example a Residue Clause can be made to say:

“The rest, residue, and remainder of my estate, and anything else, I give to \_\_\_\_\_ who survive me and if any of those just named do not survive me their part goes to their lineal descendants per stirpes.”



## CONDITIONS ON WILL GIFTS ARE RARE DUE TO POSSIBLE PROBLEMS

Putting conditions on a gift, like “I give Ann Poe \$90 if she graduates college”, can cause problems like years of delay, risk of lawsuits, and big attorneys fees. Due to all this conditions are rarely put on Will gifts.

## LATER DIVORCE OR MURDER CANCELS WILL GIFTS

Arkansas law says a person divorcing or murdering a Testator usually cancels all Will gifts to the person.

### MUST SUFFICIENTLY DESCRIBE NAMES AND PROPERTY IN WILL GIFTS

#### PUTTING NAMES OF PEOPLE OR GROUPS IN WILL GIFTS IS FAIRLY EASY

Putting names in Wills is fairly easy. A judge or Executor assume a person in a Will meant people they know, so common names are OK unless 2 friends or family have the same name. Details can help if names won't be recognized or to be friendly, like “I give \$5 to my nurse Sue Ax” and “I give \$5 to loyal pal Ed Lee”. If people used a nickname “also known as” or “a/k/a” may help, like “I give \$5 to Dan Smith a/k/a Old Fishy”. Gifts can go to a charity, government, or group, like “I give \$80 to The Salvation Army, “I give \$10 to Benton County Library, AR”, and “I give \$5 to Lob Church, Rex, Texas”. People often phone to get a charity's name.

#### PUTTING DESCRIPTIONS OF ITEMS IN WILL GIFTS IS FAIRLY EASY

Describing items in gifts is easy since people rarely own similar items. Often fine are gifts like: “I give ax to Ed Wu” and “I give big table to Ann Fox”. It's OK to gift by category or list, like: “I give tools to Sam Lee” and “I give cow, van, and harp to Sue Mo”. Financial assets can use plain words, like “bank accounts” or “stocks”, but details can help, like: “US Bank account ending #1511”. Gifting using a location is riskier as judges will ignore Will gifts if it seems items were placed to affect gifting and no “independently significant” life reason. So, “I give Ed Po items in safe and desk” judges might not follow, but “I give Ed Po hats at cabin” likely is OK.

#### DESCRIBING REAL PROPERTY IS HARD SO MANY USE RESIDUE OR TITLE

The easier and safer way to gift real property (real estate) at death is: 1) do nothing specific so it's handled by a Will Residue Clause, or 2) have a broker or lawyer add names to a deed or similar to get real property.

Gifting real property other ways is rarely done and harder, though it is possible. Helpfully a Will gift of real property by location does gift all land, buildings, and fixtures there with no need to describe what's there.

It is possible to gift real property with very plain words, like a house, fixtures, and land can be fully given by something like: “I give 21 Salem Road, Fayetteville, Arkansas to Mary Ellen Brown”.

Or people can do a blanket gift giving all of a kind of property, like, “I give all real property and fixtures I own in Pulaski Co., Arkansas to Ann Sue Hu” or “I give all real property and fixtures in any place to Paul Ian Rex”.

Giving real property in a Will using a “legal description” is how some lawyers do it, but this can be hard to do. If using a legal description people must copy without mistakes the full legal description of maybe many lines into a Will with no abbreviation at all. A legal description might be found on a deed or on mortgage papers. Legal descriptions may refer to a “lot” or “blocks” in a subdivision which is recorded in land records of a county, or it may refer to a path around the land borders with various angles, distances, and iron stakes.

## INTESTATE LAW CONTROLS THINGS NOT COVERED BY WILL OR SIMILAR

State “intestate law” says where property and money of a dead person (the decedent) goes if there is no valid Will, if anything is left after a Will is followed, or if no other transfer applies to control money or property. Some people like what intestate law says and intentionally skip doing any Will at all. In Arkansas intestate law basically gives a dead person’s things to certain closest surviving (living) family of the dead person.

Note, under intestate law if a person is dead a surviving child of them sometimes gets to get things in their place which is called “representation”. “Descendants” usually means a person’s children and grandchildren.

Arkansas intestate law if it applies (usually if there is no Will) basically gives a decedent’s property and money as follows, in order:

1. If the decedent left a surviving spouse they get “dower and curtesy” rights to 1/3 to 1/2 of real property and personal property of the decedent (see next 2 pages in this book), rights to use any homestead of decedent for their life, and rights to enough personal property of the decedent in a dwelling to live normally;
2. If the decedent who died left any surviving children or descendants of such children, then these people get the rest of decedent’s money and property;
3. If the decedent didn’t leave any surviving children or descendants of such children, then any surviving spouse gets the rest of decedent’s money and property they already didn’t get;
4. If the decedent didn’t leave any of the surviving people mentioned above, then any surviving parents of the decedent gets decedent’s money and property;
5. If the decedent didn’t leave any of the surviving people mentioned above, then surviving brothers and sisters of the decedent or their descendants gets decedent’s money and property;
6. If the decedent didn’t leave any of the surviving people mentioned above, then surviving moderately distant family of the decedent get decedent’s money and property;
7. If the decedent didn’t leave any of the surviving people mentioned above, then decedent’s money and property left goes to the state of Arkansas (it “escheats” to the state) which is very rare.

## SIMPLE WILL WITH MOST GIFTING DONE BY RESIDUE CLAUSE IS OFTEN BEST

Writing a simple Will without many gifts, much left blank, and mostly using a Residue Clause is often best.

If there is a spouse often a person does small gifts to friends and family, then uses the Residue Clause of the Will to gift all remaining to their spouse, and then names a few fallback persons in the Residue Clause.

If there is no spouse and no child often a person does a few small gifts, and then names some family or friends in the Residue Clause to get everything remaining.

A parent with young children if married to the other parent often does very small gifts to friends and family, then uses the Residue Clause to gift all remaining to their spouse, and then names as fallbacks the young children in the Residue Clause.

A parent with young children if not married or close to the other parent often does very small gifts to friends and family, and then uses the Residue Clause to gift all remaining to their children.

# CHAPTER 5

## DEBT, MARRIAGE, HOMESTEAD, AND CHILD ISSUES

### MANY PEOPLE CAN SKIP LEARNING ABOUT CERTAIN COMPLEX ISSUES

A few people face issues about debt, marriage, homestead, and children that can be very complex and hard to understand and only matter to some people. Many people can skip some or all parts of this Chapter.

### DEBT ISSUES

#### PAYING DECEDENT'S DEBTS MAY USE UP RESOURCES AND REDUCE GIFTS

If a decedent had a lot of debts any creditors they may ask a judge to be paid from decedent's money or property before Will gifts and certain transfers occur. How debts are paid is set by state law and a Will need not describe this. Funds to pay debts comes from decedent's property and estate so may affect (in order) the Will Residue, Will general gifts, Will specific gifts, and non-probate transfers. But for many reasons often not all debts are fully paid. Probate, health care, and funeral debts usually have priority to be paid first. People should consider how paying debts may use up money or property, leaving less to carry out Will gifts. A spouse and family usually aren't liable at all for decedent's debts unless they guaranteed or co-signed.

#### "FAMILY RIGHTS" OR OTHER THINGS MAY BE USED TO GET FAMILY THINGS

Most states in laws have "family rights" a decedent's surviving spouse or young children can choose to use, and this may let them get some of decedent's things before most of decedent's debts are paid back and also before a Will and other transfers occur. Arkansas partly has these family rights but in a complex way.

First, a surviving spouse has "dower and courtesy rights" to claim if wanted 1/3 to 1/2 of the decedent's real property (real estate) and personal property including some moneys (see next pages which cover this);

Second, a surviving spouse for their life and children of a decedent till they're 21 have a "homestead right" to rents, profits, and use of decedent's dwelling, which obviously may be decades (see next pages);

Third, a surviving spouse and children of decedent till they are 18 have rights to get full ownership of household items in decedent's dwelling needed to live normally, which can be most what decedent had there;

Fourth, a surviving spouse and children under 18 have a "family allowance" right to ask to get up to \$6000.

Fifth, any family member who is acting as Executor usually can ask to be paid for their hours of work.

All this can help family get more if decedent had big debts or if a Will and other transfers gave them little. But a mortgage on real property does come before family rights. Obviously if a spouse or children use family rights this leaves less for Will gifts and other transfers. So family don't bother to use family rights most people gift by Will or other ways mostly to any spouse or small children (like over 50% and the family house).

#### SECURED DEBTS LIKE MORTGAGE OR VEHICLE LIEN ARE NOT PAID OFF

Laws in most states say don't pay off secured debts like a house mortgage or vehicle lien on property even if other debts are paid by an Executor or in probate. This avoids using estate funds on paying these big debts. All this book's Will forms say don't pay secured debts without clear written instructions. But if a Testator wants they can a) put in a Will an order to pay (like, "Executor pay off the house mortgage"), or b) gift in Will money to pay off a debt to person getting a property. Most banks let new owners keep paying monthly the secured debts.

## MARRIAGE ISSUES

### MOST STATES USE “SEPARATE PROPERTY LAW” FOR SPOUSES

Arkansas and most states use the “Separate Property Law” system saying that a married person mostly owns their money and property separately and not jointly with a spouse. Therefore a spouse is mostly free to sell during life or gift by Will money and property they wholly own separately and not involve their spouse. But joint ownership by 2 spouses and not separate ownership can arise in many ways, like by agreement, paying half a purchase price, a gift was to both spouses, or if joint paperwork is done. Also many married people do a deed or other papers so a house on 1 spouse’s death automatically goes to the other spouse.

### “COMMUNITY PROPERTY” LAW APPLIES IN OTHER STATES FOR SPOUSES

There are 9 states mostly in West and South U.S.A. that use “Community Property” law for spouses there (Arizona, California, Louisiana, Idaho, Nevada, New Mexico, Texas, Washington, and Wisconsin). This law says property or money is owned 50/50 by spouses as “Community Property” if it comes from physical or mental effort while living there and married (like labor or wages, management of a business, or active trading of a collection or stocks) or if it was bought or improved with other Community Property. Most people in Arkansas avoid these issues unless they recently moved from any of these states.

### SPOUSE CAN CLAIM “DOWER AND CURTESY” INSTEAD OF FOLLOWING WILL

A spouse if unhappy with what a Will and other transfers may give them has a right to instead “elect” (choose) to use “dower and curtesy” rights. Arkansas unlike most states still uses this very old legal idea. Dower and curtesy law says a spouse once married 1 year can on a spouse’s death claim the use or profits from 1/2 a decedent’s real property (real estate) for the rest of the spouse’s life, and also ownership of 1/2 of a decedent’s personal property (this is things not real property including some money and accounts). This 1/2 share is cut to 1/3 if a decedent left surviving children of any age or if decedent left big debts. Most states give a spouse rights to some of decedent’s things for fairness, to help, and so divorce isn’t needed to be financially secure. Dower and curtesy rights are in addition to the “homestead right” to a decedent’s home (see below). Clearly if a spouse uses dower and curtesy rights to get more of decedent’s things this uses some of the estate so may interfere with other transfers. So a spouse doesn’t want to use dower and curtesy rights most married people give over 1/2 their things to any spouse (including a family house). Note, if people die intestate (with no Will) dower and curtesy rights may apply (see earlier in book).

## HOMESTEAD ISSUES

### SPOUSE AND CHILDREN MAY HAVE HOMESTEAD RIGHT TO DECEDENT’S HOME

Under Arkansas law a surviving spouse after 1 year of marriage has a “homestead” right to get for the spouse’s lifetime all profits, rents, and use of the main dwelling owned by the dead spouse (up to 1 acre if in a city or 160 acres if outside a city). If decedent left young children they also get this homestead right till they are age 21. If there is both a surviving spouse and children under 21 they split it 50/50 till the last child is 21. Due to all this a person with a spouse or children under 21 usually gives the homestead property to them.

## CHILD ISSUES

### WILL CAN NAME “GUARDIAN OF THE PERSON” TO CARE FOR YOUNG CHILD

If a parent dies with a child under age 18 any other natural or adopted parent (but not a step-parent) then almost always automatically gets control of the child's care including health care, school, and home issues, unless they will be unavailable a long time or they are legally proven unfit in court which is extremely rare. But just in case it is later needed (like if later both parents die) a Will often names a healthy and willing relative or friend to be if needed “Guardian of the Person” to care for a child and have these powers.

### WILL CAN NAME “GUARDIAN OF THE ESTATE” TO HANDLE CHILD'S PROPERTY

Since a child until age 18 can't legally manage money or property a Will often names a person to act as “Guardian of the Estate” to manage the child's property and money. They will decide each year how to use this property and money for a child's expenses (like school, living, and health care) till usually age 18 when all left goes to a child. Judges often hold a yearly hearing to review spending. Anyone paying things for a child can ask to be paid back from a child's money and property. Also, as a nice option most Wills at the end say an Executor may instead let a “Custodian” they pick manage a young child's property or money, spend it for their benefit, and at 18 give a child anything left. This is allowed by the “Uniform Transfers To Minors Act” law which lets a Custodian do most things a Guardian of the Estate does but with less work, cost, and delay.

### MOST WILLS NAME 1 PERSON TO CARE FOR CHILD AND THEIR PROPERTY

This book's Will forms and most people in Arkansas name the same person to be Guardian of the Person caring for a child and also be Guardian of the Estate caring for a child's money and property. But people can modify a Will to name different people for the 2 positions if they really want. Naming different people is rarely worth the bother since parents dying is rare, rarely do children get money and property, a person trusted with a child usually should be trusted with money, and naming different people can lead to arguments and lawsuits.

### PERSON TO BE A GUARDIAN MUST BE AT LEAST 18 AND NOT A BAD CRIMINAL

A person must be at least age 18 and not have a seriously bad criminal record (including no felonies) to serve as a Guardian of any type. A person not residing in Arkansas can be a Guardian but they must name a local person to get legal paperwork. Being local usually does make work easier. Choice for these positions by the last living parent usually is followed. If no Will picks a person for a position or they're unavailable a judge can pick, but family may argue about who to suggest to the judge. Naming 2 people for a position for a child to act at the same time is rare since the 2 persons may argue and any 1 person named should be trusted, and Arkansas law usually doesn't allow 2 persons to be Guardian at the same time. Some Wills do add a 2nd fallback person to help a child if the 1st person is unavailable, like: “or if they are later reasonably unable to serve I name \_\_\_\_\_ to serve”). But many people skip naming a fallback person since it's rarely needed, if a problem is seen a Will usually can be re-done, and a judge always can act and name someone.

### PICKING GUARDIANS RARELY MATTERS DESPITE PARENTS WORRYING

A young child having parents die is rare so parents shouldn't worry that much about this. A very large U.S. study of 311,900 people found 72,240 were under 18 and of these 2014 had lost 1 parent (2.78%) and just 97 both parents (just 0.13%), so losing parents is very rare. *Parent Mortality Census SIPP Paper #288*.

# CHAPTER 6

## BASIC IDEAS ABOUT HEALTH CARE FORMS

### SOME BASIC IDEAS HELP PEOPLE UNDERSTAND HEALTH CARE LEGAL FORMS

Some ideas help people understand health care forms.

■ By law people controls their own health care by telling medical personnel what they want unless they are "incapacitated" by insufficient ability to a) communicate verbally or by notes, b) be rational, or c) be conscious. Most people keep control of their own care till death or till no big treatment options remain, but some people worry they may be incapacitated a long time so want to do health care forms.

■ Legal documents that help control health care are usually called "Advanced Directives".

■ If an adult 18 or older becomes incapacitated the adult's closest family like spouse or adult child usually can make emergency decisions. But later they usually must then rush to a judge to get further power if no legal document gives them more power over health care.

■ In legal documents a person can be named to have control of health care if needed. This person is often called the "Health Care Agent", "Health Care Attorney-in-Fact", "Health Care Advocate", or a similar name.

■ In legal documents people can write medical instructions that doctors, family, and other people must obey.

■ Parents even without legal documents mostly have full power over health care of children under age 18, and the only exception is teens have some freedom to pick their own family planning or gender related care.

■ Some married people do documents to give a spouse power over medical care if they are incapacitated. Some adults especially to age 25 do documents to give this power to parents. The young are less often sick.

■ Pain relief like pain drugs or comfort care is still given even if documents say to stop or limit other care.

■ Most people only do 1 legal document about health care that often names someone to control health care if needed and has a spot for basic instructions (this is sometimes called a "Health Care Power of Attorney").

■ For the rare times stopping health care seems more likely to matter (like due to extreme illness or old age):

-- most people do nothing special and trust family or Health Care Agent to wisely decide when to stop care (they can weigh many factors like pain, cost, likely difficulty of treatment, beliefs, and chances of recovery);

-- a few people do a serious document to say to stop most health care if later doctors think an incapacitated person has very bad health and more medical care likely won't help (sometimes this is called a "Living Will";

-- a few people do a serious document to say starting immediately to not give most medical care (often this is called a "Do-Not-Resuscitate" if about resuscitation, or called a "Physician's Order" if about many treatments).

# CHAPTER 7

## FORM 1: WILL (STANDARD)

### FORM 1 IS A STANDARD WILL THAT IS FLEXIBLE AND WITHOUT A GUARDIAN

Form 1 is a standard Will that is flexible and lets a person control many different things after their death. This form has no part about a Guardian so this form is for a person with no minor child under age 18.

### FORM IS A WILL WITH SEVERAL PARTS

The form starts with places for a person to put their name (a full legal name is best but not required) and current main residence (most put a county but some put a city). A Will is still valid if people later move.

The 1st paragraph, "Gifts", has many spaces to make either specific gifts of particular property or general gifts like of money. People can delete, copy and paste to add more, or leave blank these gift lines.

The 2nd paragraph, "Separate Writings", says to follow any separate writings done apart from the Will that gifts tangible personal property in manner allowed by state law.

The 3rd paragraph, "Residue", has a Residue Clause to say property and money left after other Will parts and other transfers is to be distributed in the way a person wrote in the blank parts of this paragraph.

The 4th paragraph, "Administration", has a space to name a Personal Representative to handle legal and other matters after a person's death (some states and people use the old term "Executor" for this).

The 5th paragraph, "Miscellaneous", has paragraphs of legal language to help avoid certain legal issues.

Last is a paragraph for the person doing the Will as Testator to date and sign and put the city they are located in when signing, and a paragraph for the 2 witnesses to sign and put their addresses.

### USUAL RESIDUE CLAUSE HAS 2 PLACES TO NAME PERSONS TO GET THINGS

In a Will "Residue Clause" anything left over after other Will parts is transferred as the clause directs. Many people use a Residue Clause to gift most their things. In this Will form's Residue Clause there is:

- 1) a 1st space to name 1 or more persons to get the Residue, and if any person named here has died before the Will maker then any other persons named here in this 1st space take their share, and
- 2) a 2nd space to name people to get things if all people named in the 1st space have died, and if any people named in the 2nd space have died their shares go to "lineal descendants" like their children.

Most people name in the 1st space a spouse or closest family or closest friends, and in 2nd space next closest family or friends. This may seem complex but usually those in the 1st space will get things.

### TESTATOR AND 2 WITNESSES WHILE TOGETHER SIGN WILL

This Will after being filled out (except bits intentionally left blank) must be signed by the person doing the Will (the "Testator") in front of 2 persons acting as witnesses at least age 18 who then also sign the Will. Testator should aloud declare to witnesses it is their Will and they want it witnessed, and many people say a thing like: "My name is \_\_\_\_\_ and this is my Will that I do voluntarily and want you 2 people to witness". Testator and witnesses should be in 1 room and see all others sign. Usually people try to pick witnesses so no Will gift is going to them. Witnesses usually just read the 1 paragraph of the Will they are signing below. Once completed a Will usually should be kept so it can be found quickly within weeks of a Testator's death.

# LAST WILL AND TESTAMENT

I, \_\_\_\_\_, of \_\_\_\_\_, Arkansas, do revoke all prior Wills and testamentary documents and do make, publish, and declare this as my Will. I am of sound mind and under no duress or undue influence and acting voluntarily.

**1. GIFTS.** I give these gifts in this Will, but to get a gift in this section the recipient must survive me except as otherwise stated below.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

**2. SEPARATE WRITINGS.** I may do writings separate from this Will to gift tangible personal property as allowed by state law, and all such writings should be followed. But any such writing not found within 90 days of my death is canceled and has no effect. A gift in such a writing to a person who does not survive me is canceled and has no effect. This Will does not revoke any such writings that now exist.

**3. RESIDUE.** I give the rest and residue and remainder of my estate, my money and property of any kind and nature, and anything I have an interest in so long as it was not transferred by other Will provisions (all of which is called the “residue”), as follows:

a) to \_\_\_\_\_ who survive me with persons just named who survive me taking the share of non-survivors, then

b) to \_\_\_\_\_ and if any of those just named do not survive me their part goes to their lineal descendants per stirpes.



**4. ADMINISTRATION.** I name and appoint \_\_\_\_\_  
as Personal Representative including for me, my Will, and my estate.

**5. MISCELLANEOUS.** The following applies to this Will and generally.

My main residence is in the state of Arkansas and its laws should apply to this Will.

If a gift or section in this Will reasonably mentions survival in any way then such survival is an absolute condition and anti-lapse laws or similar have no effect.

Priority of Will gifts of the same type is based on the order they are written.

In this document no unfilled part is a mistake and residue spaces may be left blank.

The words “give” and “gift” also means a devise, bequest, grant, legacy, or similar.

A gift of property no longer owned by Testator at death shall lapse and be of no effect including no payment of money shall be done in its place, and all without ademption.

Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive Testator their part to them lapses and instead goes to other surviving recipients.

I am not providing by Will gifts or other ways for some of my children or other heirs, and this is intentional and not an omission or mistake to remedy.

No gift or transfer I made during my life to a person reduces or offsets a Will gift, unless during my life I expressly usually called it a loan or advancement.

Unless another meaning is shown by context use of plural includes the singular and vice versa, and also masculine, feminine, and neuter words are used interchangeably.

Unless another meaning is shown “they” means both one person and multiple persons.

Unless a Will specifically says otherwise a) a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, b) a recipient of a Will gift of property takes it subject to debts, c) no recipient of a Will gift who later loses property gifted to them to a debtor or who pays to avoid foreclosure or other loss may require the estate or anyone to pay recipient back, do exoneration, or do or pay anything.

I request and authorize any informal, summary, and quick probate or similar action. Any Personal Representative may act independently with no supervision of any court, including independent administration, and with no inventory, appraisal, or other action.

I give any Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts any time they in their sole discretion chooses. Any Personal Representative is given all powers that may be given or held by law including powers listed in Ark. Code Ann. § 28-69-304 (1987) which is hereby incorporated here.

Any Personal Representative paying for something should be paid all their expenses and costs including any amounts they pay or advance to benefit the estate.

A lawyer should be paid as Personal Representative agreed to pay and no percentage.

Any Personal Representative has sole discretion how to balance people's feelings and pick property or divide a gift to do a general gift or a gift to multiple persons.

Any Guardian of the Estate or a Custodian managing a minor's property or money may use or invade the principal, sell the property, and do any other action without court action.

If context permits the terms Personal Representative, Executor, and Administrator are interchangeable as if all were written, and Guardian of the Estate is interchangeable with Conservator and Custodian, and the terms Residue and Residuary are interchangeable.

The residue includes lapsed or failed gifts, insurance paid to the estate, any inheritances owed, and property I have or had a power of appointment or testamentary disposition over.

Any Personal Representative, Executor, Administrator, Guardian including of the person or estate of a minor, Conservator, Custodian, and any fiduciary under this Will or otherwise shall qualify and serve without bond, surety, security, surety bond, or similar.

If someone dies within 120 hours of me they shall be deemed to have died before me.

If part of this Will is by law invalid or unenforceable other provisions remain in effect.

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the Arkansas Uniform Transfers to Minors Act or a similar law anywhere. They may pick the Custodian including themselves but if they do not I name for this the person named in this Will to be Guardian of the Estate.

### **TESTATOR**

IN WITNESS WHEREOF, I now execute this instrument in \_\_\_\_\_,  
Arkansas, in the presence of the undersigned attesting witnesses to whom I declare this to  
be my Will on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Testator's Signature

### **WITNESSES**

We, the undersigned, do hereby certify that the Testator in the foregoing instrument and Will subscribed the same in our presence at the time declaring to us that said instrument was their Will; and we at the Testator's request and in their presence and in the presence of each other, now sign our names as attesting witnesses.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Address of Witness

# CHAPTER 8

## FORM 2: WILL (GUARDIAN)

### FORM 2 IS BASIC WILL WITH GUARDIAN CLAUSE FOR YOUNG CHILD

Form 2 is a Will with a Guardian part to be used by a person with a minor child under age 18.

### FORM IS A WILL WITH SEVERAL PARTS

The form starts with places for a person to put their name (a full legal name is best but not required) and current main residence (most put a county but some put a city). A Will is still valid if people later move.

The 1st paragraph, "Gifts", has many spaces to make either specific gifts of particular property or general gifts like of money. People can delete, copy and paste to add more, or leave blank these gift lines.

The 2nd paragraph, "Separate Writings", says to follow any separate writings done apart from the Will that gifts tangible personal property in manner allowed by state law.

The 3rd paragraph, "Residue", has a Residue Clause to say property and money left after other Will parts and other transfers is to be distributed in the way a person wrote in the blank parts of this paragraph.

The 4th paragraph, "Administration", has a space to name a Personal Representative to handle legal and other matters after a person's death (some states and people use the old term "Executor" for this).

The 5th paragraph, "Guardian", names a person to if needed care for minor children as Guardian of the Person, and also if needed act as Guardian of the Estate to manage a child's property and money.

The 6th paragraph, "Miscellaneous", has paragraphs of legal language to help avoid certain legal issues.

Last is a paragraph for the person doing the Will as Testator to date and sign and put the city they are located in when signing, and a paragraph for the 2 witnesses to sign and put their addresses.

### USUAL RESIDUE CLAUSE HAS 2 PLACES TO NAME PERSONS TO GET THINGS

In a Will "Residue Clause" anything left over after other Will parts is transferred as the clause directs. Many people use a Residue Clause to gift most their things. In this Will form's Residue Clause there is:

- 1) a 1st space to name 1 or more persons to get the Residue, and if any person named here has died before the Will maker then any other persons named here in this 1st space take their share, and
- 2) a 2nd space to name people to get things if all people named in the 1st space have died, and if any people named in the 2nd space have died their shares go to "lineal descendants" like their children.

People often put in the 1st space a spouse or closest family or friends, and in 2nd space next closest people.

### TESTATOR AND 2 WITNESSES WHILE TOGETHER SIGN WILL

This Will after being filled out (except bits intentionally left blank) must be signed by the person doing the Will (the "Testator") in front of 2 persons acting as witnesses at least age 18 who then also sign the Will. Testator should aloud declare to witnesses it is their Will and they want it witnessed, and many people say a thing like: "My name is \_\_\_\_\_ and this is my Will that I do voluntarily and want you 2 people to witness". Testator and witnesses should be in 1 room and see all others sign. Usually people try to pick witnesses so no Will gift is going to them. Witnesses usually just read the 1 paragraph of the Will they are signing below. Once completed a Will usually should be kept so it can be found quickly within weeks of a Testator's death.

# LAST WILL AND TESTAMENT

I, \_\_\_\_\_, of \_\_\_\_\_, Arkansas, do revoke all prior Wills and testamentary documents and do make, publish, and declare this as my Will. I am of sound mind and under no duress or undue influence and acting voluntarily.

**1. GIFTS.** I give these gifts in this Will, but to get a gift in this section the recipient must survive me except as otherwise stated below.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

**2. SEPARATE WRITINGS.** I may do writings separate from this Will to gift tangible personal property as allowed by state law, and all such writings should be followed. But any such writing not found within 90 days of my death is canceled and has no effect. A gift in such a writing to a person who does not survive me is canceled and has no effect. This Will does not revoke any such writings that now exist.

**3. RESIDUE.** I give the rest and residue and remainder of my estate, my money and property of any kind and nature, and anything I have an interest in so long as it was not transferred by other Will provisions (all of which is called the “residue”), as follows:

a) to \_\_\_\_\_ who survive me with persons just named who survive me taking the share of non-survivors, then

b) to \_\_\_\_\_ and if any of those just named do not survive me their part goes to their lineal descendants per stirpes.

**4. ADMINISTRATION.** I name and appoint \_\_\_\_\_ as Personal Representative including for me, my Will, and my estate.

**5. GUARDIAN.** I hereby name \_\_\_\_\_ to be if needed the Guardian of the Person of any minor child of mine and to have care, authority, control, custody, and other control of them. I also name this same person to be if needed Guardian of the Estate of any minor child of mine or other minor and their property, money, and estate.

**6. MISCELLANEOUS.** The following applies to this Will and generally.

My main residence is in the state of Arkansas and its laws should apply to this Will.

If a gift or section in this Will reasonably mentions survival in any way then such survival is an absolute condition and anti-lapse laws or similar have no effect.

Priority of Will gifts of the same type is based on the order they are written.

In this document no unfilled part is a mistake and residue spaces may be left blank.

The words “give” and “gift” also means a devise, bequest, grant, legacy, or similar.

A gift of property no longer owned by Testator at death shall lapse and be of no effect including no payment of money shall be done in its place, and all without ademption.

Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive Testator their part to them lapses and instead goes to other surviving recipients.

I am not providing by Will gifts or other ways for some of my children or other heirs, and this is intentional and not an omission or mistake to remedy.

No gift or transfer I made during my life to a person reduces or offsets a Will gift, unless during my life I expressly usually called it a loan or advancement.

Unless another meaning is shown by context use of plural includes the singular and vice versa, and also masculine, feminine, and neuter words are used interchangeably.

Unless another meaning is shown “they” means both one person and multiple persons.

Unless a Will specifically says otherwise a) a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, b) a recipient of a Will gift of property takes it subject to debts, c) no recipient of a Will gift who later loses property gifted to them to a debtor or who pays to avoid foreclosure or other loss may require the estate or anyone to pay recipient back, do exoneration, or do or pay anything.

I request and authorize any informal, summary, and quick probate or similar action. Any Personal Representative may act independently with no supervision of any court, including independent administration, and with no inventory, appraisal, or other action.

I give any Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts any time they in their sole discretion chooses. Any Personal Representative is given all powers that may be given or held by law including powers listed in Ark. Code Ann. § 28-69-304 (1987) which is hereby incorporated here.

Any Personal Representative paying for something should be paid all their expenses

and costs including any amounts they pay or advance to benefit the estate.

A lawyer should be paid as Personal Representative agreed to pay and no percentage.

Any Personal Representative has sole discretion how to balance people's feelings and pick property or divide a gift to do a general gift or a gift to multiple persons.

Any Guardian of the Estate or a Custodian managing a minor's property or money may use or invade the principal, sell the property, and do any other action without court action.

If context permits the terms Personal Representative, Executor, and Administrator are interchangeable as if all were written, and Guardian of the Estate is interchangeable with Conservator and Custodian, and the terms Residue and Residuary are interchangeable.

The residue includes lapsed or failed gifts, insurance paid to the estate, any inheritances owed, and property I have or had a power of appointment or testamentary disposition over.

Any Personal Representative, Executor, Administrator, Guardian including of the person or estate of a minor, Conservator, Custodian, and any fiduciary under this Will or otherwise shall qualify and serve without bond, surety, security, surety bond, or similar.

If someone dies within 120 hours of me they shall be deemed to have died before me.

If part of this Will is by law invalid or unenforceable other provisions remain in effect.

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the Arkansas Uniform Transfers to Minors Act or a similar law anywhere. They may pick the Custodian including themselves but if they do not I name for this the person named in this Will to be Guardian of the Estate.

### **TESTATOR**

IN WITNESS WHEREOF, I now execute this instrument in \_\_\_\_\_,  
Arkansas, in the presence of the undersigned attesting witnesses to whom I declare this to  
be my Will on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Testator's Signature

### **WITNESSES**

We, the undersigned, do hereby certify that the Testator in the foregoing instrument and Will subscribed the same in our presence at the time declaring to us that said instrument was their Will; and we at the Testator's request and in their presence and in the presence of each other, now sign our names as attesting witnesses.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Address of Witness

## CHAPTER 9

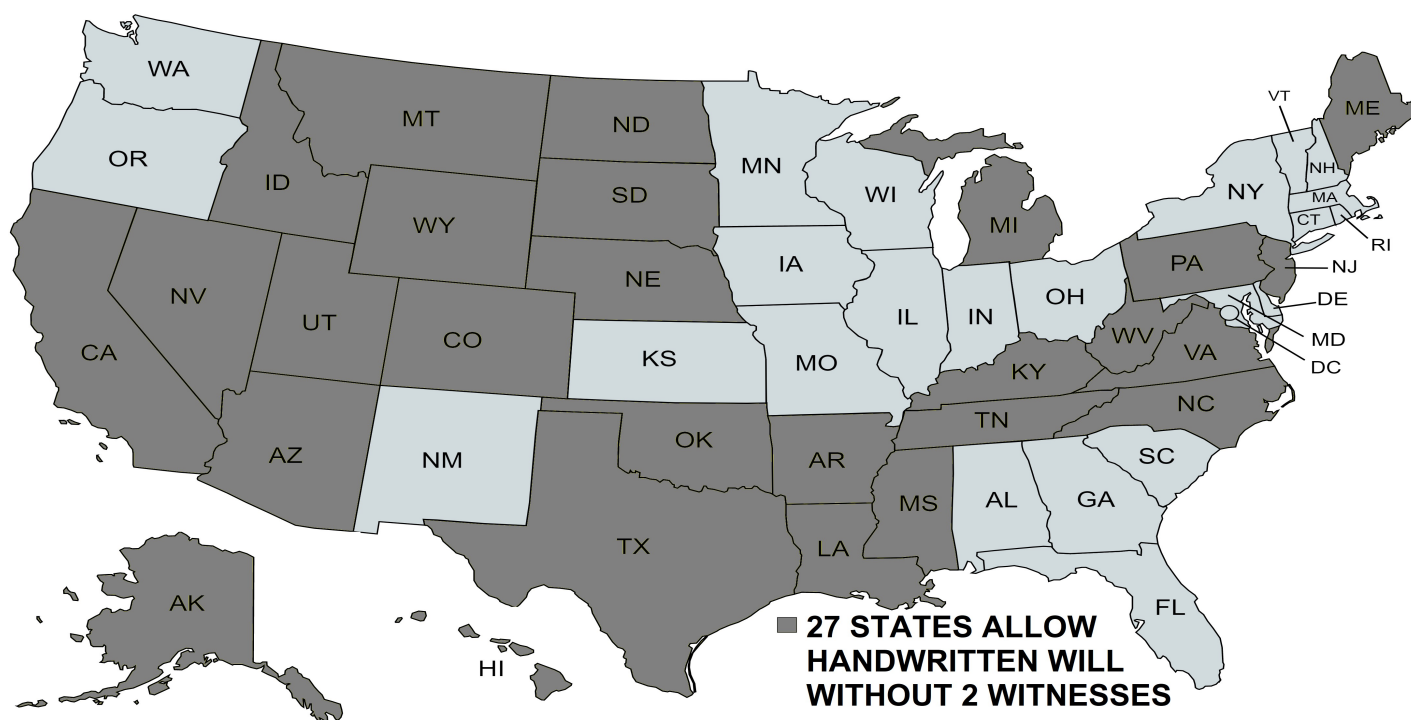
### FORM 3: HANDWRITTEN WILL

#### WILL CAN SKIP USING THE NORMAL 2 WITNESSES IF IT IS ALL HANDWRITTEN

A “Handwritten Will” (often called a “Holographic Will” by lawyers) is a Will that is easier to do by not needing the usual 2 witnesses see it signed if it is completely handwritten by the person doing the Will.

#### HANDWRITTEN WILL WITHOUT WITNESSES IS ALLOWED IN ARKANSAS

In 27 states including Arkansas a person doing a Will can skip having the usual 2 witnesses for a Will if: 1) it is all handwritten by Testator doing Will (not photocopied, typed, computer printed, or handwritten by anyone else), and 2) it is signed and dated. Many people call this a “Handwritten Will”, and lawyers call this a “Holographic Will” (Holo means Whole and Graph means Image in the Greek language lawyers often use). State lawmakers allow this since handwriting is hard to fake, people may be in emergency or rush, witnesses may be scarce in the countryside or emergencies, it is private, it can be cheap by skipping complexity and people, and it is traditional especially in rural places. States that allow Handwritten Wills have about 55% of the U.S. population so Handwritten Wills are common, and in these states these are about 5% of all Wills. Lawmakers want people to have this simple option. See states with Handwritten Wills on map below in dark.



#### HANDWRITTEN WILLS ARE USUALLY FINE BUT REQUIRE LATER WORK

Some lawyers warn against Handwritten Wills saying they often read confusingly, skip legal words that help in some cases, and are found invalid more often – but some studies show they are liked and usually fine. To use a Handwritten Will after a death 3 witnesses must in writing or in testimony say the handwriting on the Will looks like the Testator’s, which can be a hassle. But a normal Will if no Proof of Will form done before a notary was done also will need some later work to use it. Handwritten Wills tend to be used by people who are young so unlikely to need a Will soon, who are in a hurry, who want to fix a mistake, who are about to go on a trip and want to pick a Guardian, who moved to a new state, or who plan a better Will later.

## WORDS ON BOTTOM OF THIS PAGE CAN BE USED FOR A HANDWRITTEN WILL

People can do a Handwritten Will in a sentence that is legal but may leave out helpful parts, for example:

"As my Will I give my estate and all else I have to Judy Smith who shall be Personal Representative."

But it is recommended people use more complex words for a Handwritten Will shown below on this page.

To do this people should change the names and words below on this page to match what they want done.

The words below mainly say property and money goes to the persons whose names are written in the Will.

If some people named to get things later die it is usually best to re-do the Will and name different people.

The last paragraph about Guardians for children can be skipped if a person has no child under age 18.

The Will must be all handwritten and signed by person doing it on some paper, and using pencil is fine.

### W I L L

1. *I am John Alan Smith and I now live in Pulaski County, Arkansas.  
I revoke any prior Wills and declare this to be my Will.*

2. *I give my estate and all else to Jane Eve Smith and Wendy Sue  
Baxter. My not giving to some other family members is not a mistake.*

3. *I name Jane Eve Smith as Executor for me, my Will, and my  
estate. I request informal probate.*

4. *No Executor or Guardian or similar shall have to provide a bond.*

5. *For any minor child of mine I name Mary Sue Hill as Guardian of  
the Person and as Guardian of the Estate for them.*

*May 8, 2023*

*John Alan Smith*



# CHAPTER 10

## FORM 4: PROOF OF WILL

### FORM IS SOMETIMES DONE WITH WILL TO REDUCE LATER LEGAL WORK

This form can be done to help with later small legal work involved with using a Will after a death. The form must be signed by a person in front of a person who is a notary who then notarizes and signs it. This form is not required to have a valid Will and can be skipped.

### FORM HELPS TO LATER SHOW WILL WAS PROPERLY SIGNED

This form helps after a death when trying to use a Will to prove it was properly signed. If a Proof of Will form is not done more work may be needed later, like later a witness to the Will must be found and say in court or submit a writing about how a Will was signed (or if this isn't available other proof can be given). Without this form there is more risk a Will is legally not followed later. About half of Wills are done without a Proof of Will form mostly since it's a hassle to use a notary to do a Will, since people don't expect a Will to be used soon (like people are young or plan on re-doing a Will), and since it mostly just saves later work of people likely happy to be getting things in the Will. Many states call this form a "Self-Proving Affidavit".

### FORM IS DONE BY TESTATOR AND 2 WITNESSES SIGNING WITH A NOTARY

To complete the Proof of Will form a notary (also called "notary public") must see the form signed by the Testator and the 2 witnesses to the Will signing, and then the notary signs and notarizes the form. The form is often done a few minutes after a Will is signed but it also can be done much later (even years later) when Testator and 2 witnesses can meet a notary. Any notary will know how to fill out this form. Once done the Proof of Will form must under Arkansas law be attached the Will it supports which usually means by staple or by paperclip.

# PROOF OF WILL

(Arkansas Code § 28-25-106)

STATE OF ARKANSAS        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

We, \_\_\_\_\_ and \_\_\_\_\_,  
on oath state that we are the subscribing witnesses to the attached written instrument,  
dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, which purports to be the  
Will of \_\_\_\_\_ as Testator.

On the execution date of the instrument the Testator, in the presence of all of us,  
signed the instrument at the end and declared the instrument to be the Testator's Will,  
and requested that we attest to their execution of it.

Then, in the presence of the Testator and all other witnesses each of us signed our  
names as an attesting witness, and our names appear below the signature of the Testator  
on the Will.

At the time of execution of the instrument, the Testator appeared to be 18 years of  
age or older, of sound mind, and acting without undue influence, fraud or restraint.

Signature of Witness: \_\_\_\_\_

Address of Witness: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Address of Witness: \_\_\_\_\_

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

# CHAPTER 11

## FORM 5: TANGIBLE PERSONAL PROPERTY LIST

### LETS GIFTS OF SOME PROPERTY BE EASILY MADE OUTSIDE A WILL

This form lets people easily add to a Will some gifts of property they want to occur at their death. This form is often called by people a “Memorandum”, a “Gift List”, or often just a “List”.

### FORM GIVES EASY QUICK WAY TO WRITE MORE GIFTS

This List form lets a person easily write more gifts of certain property to occur at their death without having to re-do a Will. To use this form state law requires a valid Will says that Lists can be used, and all this book’s Will forms say this. If a List and a Will gift the same item then by law the Will is followed. If multiple Lists gift the same item the more recently done page controls. People can modify an existing List page if they then write a new date and signature on the page. Note, to help avoid later delay this book’s form says a List not found within 90 days of a death will be ignored.

### FORM CAN ONLY GIFT “TANGIBLE PERSONAL PROPERTY”

By law the form can only gift tangible (touchable) things and not accounts or investments where ownership is tied to papers, accounts, or entities like a company. The form can only gift personal property so not real property (land or buildings), and also not coin or paper money even if they’re old and collectible. Under state law any items used in a trade or business (including a small business) can’t be given by List. Lists usually can give clothes, furniture, vehicles, tools, electronics, appliances, antiques, art, and jewelry. Improper property in a List is ignored.

It may help understanding to show the Arkansas law allowing Lists, which in its main part says:

#### **28-25-107. Incorporation of writing by reference.**

(a) [omitted]

(b) (1) [Any] will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, securities, and property used in trade or business.

(2) To be admissible under this subsection as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him or her and must describe the items and devisees with reasonable certainty.

### TO COMPLETE A GIFT LIST A PERSON JUST SIGNS AND DATES IT

A List form to be legally valid just must be signed and usually dated by person who is doing the form. Once completed any List form pages are often kept with a Will. To cancel a List form it can be destroyed, crossed out, or just thrown away so it is not found later.

## **TANGIBLE PERSONAL PROPERTY LIST**

In this writing are gifts of tangible personal property to occur at my death,  
but this writing if not found by someone within 90 days of my death is canceled.

I may do multiple pages of these writings which should all be seen as a single  
document with the more recently done page controlling if any gifts conflict.

If a person getting a gift below does not survive me such gift is void and canceled.

### **PROPERTY ITEMS**

### **NAMES OF RECIPIENTS**

_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____

**DATE:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_

# CHAPTER 12

## FORM 6: DURABLE POWER OF ATTORNEY FOR HEALTH CARE

### FORM CAN NAME HEALTH CARE AGENT AND GIVE INSTRUCTIONS

This form lets a person name someone as Agent and also give instructions to help control health care if a person is later incapacitated. This 1 form is often the only form to control health care people ever do. A legal aid group has a similar form at: [a.arlawhelp.org/wills-and-estates/power-of-attorney/health-care](http://a.arlawhelp.org/wills-and-estates/power-of-attorney/health-care).

### FORM CAN NAME AGENT FOR HEALTH CARE AND GIVE INSTRUCTIONS

The form lets someone be named Agent to control health care if later the person doing the form is ever incapacitated. This person is also called the “attorney-in-fact”. Often named as Agent is a trusted spouse, adult child, relative, or a very reliable friend. Naming a family member like a spouse as Agent can avoid their need to rush to see a judge for more power if a person falls ill. Workers at a place giving health care usually shouldn’t be Agent unless they’re a family relative. A 2nd person can be named to serve as Agent if ever needed but this rarely matters and most people just skip this. The form has an optional space to say who a person would prefer be their Guardian just in case this is ever needed, and doing this part may help later. The form has an area to give some health care instructions but many people skip this since 1) they trust the wisdom of their family or Agent for health care and 2) if instructions aren’t legally or medically clear the instructions can cause big legal problems or delays.

### PERSON SIGNS FORM IN FRONT OF EITHER A NOTARY OR 2 WITNESSES

A person to use this form must sign it in front of either a notary who then notarizes it, or in front of 2 witnesses at least age 18 who then sign the form. The form need not be both witnessed and notarized. Witnesses usually should not be named as Agent in the form, be a relative by blood or marriage or adoption, and not be likely to get the person’s money or property if they die under a current Will or by Arkansas law. Once it is completed usually the form is shown to places that may give care to put in a person’s medical file to read and follow. To cancel the form a person usually tells their doctor and any places that saw the form.

# DURABLE POWER OF ATTORNEY FOR HEALTH CARE

---

(name of person doing this document)

Pursuant to the Arkansas Healthcare Decisions Act (Ark. Code Ann. § 20-6-101 et seq.) (the “Act”), I, as Declarant, hereby designate and appoint \_\_\_\_\_ as my agent, or attorney-in-fact, whose phone number is \_\_\_\_\_, **to make decisions regarding my health care during periods when my health care provider has determined that I lack capacity to decide for myself.** Specifically, and not to limit any other rights prescribed under the Act, my attorney-in-fact shall have the following powers:

- (a) To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;
- (b) To have access to medical records and information to the same extent that I am entitled to, including the right to disclose the contents to others;
- (c) To authorize my admission to or discharge, even against medical advice, from a hospital, nursing home, residential care, assisted living or similar facility or other healthcare facility;
- (d) To contract on my behalf for any health care related service or facility on my behalf, without my agent incurring personal financial liability for such contracts;
- (e) To select and discharge medical, social service, and other support personnel responsible for my care;
- (f) To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;
- (g) To take any other action necessary to do what I authorize here, including but not limited to granting any waiver or release from liability required by any hospital, physician, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice; and pursuing any legal action in my name, and at the expense of my estate, to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

This Power of Attorney for Health Care shall give my agent the authority to make decisions about withholding or withdrawal of life-sustaining treatment, and nutrition and hydration, according to my wishes expressed in my Living Will, Health Care Directive, and/or Advance Care Plan, or if my wishes are unclear under the then existing circumstances of my medical condition, then upon consideration of my best interest as determined by my physician in consultation with my attorney-in-fact.

If the person named attorney-in-fact earlier in this document resigns or is not able, available, or willing to make health care decisions for me, **I appoint as their successor**

\_\_\_\_\_, whose phone number is \_\_\_\_\_, with all of the rights and powers and authority herein stated. The term "health care" shall have the meaning set forth in Ark. Code Ann. § 20-6-102.

**This Durable Power of Attorney for Health Care shall not be affected by my subsequent disability or incapacity.**

**Nomination of Guardian (Optional)**

\_\_\_\_\_ I do not want to nominate a guardian.

\_\_\_\_\_ I want to nominate the following guardian:

If it becomes necessary for a court to appoint a guardian of my estate or guardian of my person, I nominate the following person for appointment: \_\_\_\_\_, who resides at \_\_\_\_\_, and whose phone number is \_\_\_\_\_.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

**This document must be signed using 2 witnesses or a notary. If you have questions regarding this form or need assistance you should consult an attorney.**

**WITNESSES:**

We the undersigned, do hereby certify that the Declarant, \_\_\_\_\_, subscribed this Durable Power of Attorney for Health Care in our presence, and we, at the Declarant's request, in their presence, and in the presence of each other, signed as attesting witnesses, and we do further certify that the Declarant appeared to be 18 years of age or older, of sound mind, and acting without undue influence, fraud, or restraint and acting voluntarily. We also specifically say neither of us are named as agent or attorney-in-fact in this document, and also that neither of us are related to the declarant by blood, marriage, or adoption and would be entitled to any portion of the declarant's estate upon their death under any existing will or codicil or by operation of law.

Witness Signature: \_\_\_\_\_

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

Witness Signature: \_\_\_\_\_

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

**NOTARY:**

STATE OF ARKANSAS )  
COUNTY OF \_\_\_\_\_ )

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the individual, \_\_\_\_\_. The individual personally appeared before me and signed above or acknowledged the signature above as his or her own on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. I declare under penalty of perjury that the individual appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: \_\_\_\_\_

Signature of Notary Public



## CHAPTER 13

### FORM 7: LIVING WILL DECLARATION

#### IN FORM CAN SAY TO STOP CARE IF DOCTORS LATER THINK IT WON'T HELP

This form lets a person do serious act of saying stop health care if a person is ever incapacitated and doctors later think it likely won't help. This form is called by some people the "Health Care Declaration". A legal aid group has a similar form at: [a.arlawhelp.org/wills-and-estates/living-will-form-packet](http://a.arlawhelp.org/wills-and-estates/living-will-form-packet).

#### FORM SAYS STOP CARE IF DOCTORS LATER THINK MORE CARE WON'T HELP

This form does the serious act of saying if a person is ever incapacitated that health care should stop if doctors later think more care won't help. This usually means doctors later think a condition is terminal (a person will die within a year or so even if life-sustaining care is given) or a person will be in a persistent vegetative state (unaware of surroundings and unable to interact). The form has an area to specifically say which treatments a person doesn't want tried, but most people think this is unnecessary and skip this part. Overall, most people skip doing this form since it rarely matters, it is very stressful to do, it is a hassle to arrange witnesses or a notary, and people trust their family or Agent for health care to be wise if a person is incapacitated and the issue of stopping care arises. Healthy people can do this form just in case.

#### PERSON SIGNS FORM IN FRONT OF EITHER A NOTARY OR 2 WITNESSES

A person to use this form must sign it in front of either a notary who then notarizes it, or in front of 2 witnesses at least age 18 who then sign the form. The form need not be both witnessed and notarized. Witnesses usually should not be a relative by blood or marriage or adoption, be named as someone to control a person's health care (as Agent or Proxy or other way), and be likely to get the person's money or property if they die under any Will or by law. Once it is completed usually the form is shown to places that may give care to put in a person's medical file to read and follow. To cancel the form a person usually tells their doctor and any places that saw the form.

# LIVING WILL DECLARATION

I, \_\_\_\_\_, as the principal doing this form, and as an adult resident of the State of Arkansas, being of sound mind do hereby declare the following:

If in the future I can no longer take part in health care decisions for me then this statements stand as an expression of my wishes and my declaration while I am of sound mind.

1. If I should have an **incurable or irreversible condition** that will cause my death within a relatively short time, and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, including pursuant to the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act and the Arkansas Healthcare Decisions Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain. It is my specific directive that nutrition and hydration may be withheld after consultation with my attending physician.

2. If I should become **permanently unconscious**, I direct my attending physician, including pursuant to the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act and the Arkansas Healthcare Decisions Act, to withhold or withdraw life-sustaining treatments that are no longer necessary to my comfort or to alleviate pain. It is my specific directive that nutrition and hydration may be withheld after consultation with my attending physician.

3 OPTIONAL: It is my **specific directive the following treatments which I have initialed be withheld or withdrawn** after consultation with my attending physician:

☐ Cardiopulmonary resuscitation (CPR)

☐ Antibiotics

☐ Surgery

☐ Kidney dialysis

☐ Respiratory support

☐ Chemotherapy

☐ Blood products

☐ Invasive diagnostic tests

☐ Artificial nutrition

☐ Artificial hydration (including IV fluids)

☐ Other(s): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature: \_\_\_\_\_

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

**This document must be signed using 2 witnesses or a notary. If you have questions regarding this form or need assistance you should consult an attorney.**

**WITNESSES: WE HEREBY BEAR WITNESS** that \_\_\_\_\_  
signed the foregoing instrument in the presence of each of us and requested us to sign our names as witnesses. We are both competent adults over age 18 who are not named as a healthcare proxy or agent in this or another document. We are not related to the principal by blood, marriage, or adoption and neither of us would be entitled to any portion of their estate upon their death under any will or codicil or by operation of law.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness Signature: \_\_\_\_\_

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

Witness Signature: \_\_\_\_\_

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

**NOTARY:**

STATE OF ARKANSAS                    )  
  )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person who subscribed to the within instrument and acknowledged that they executed the same for the consideration, use and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public: \_\_\_\_\_

# CHAPTER 14

## FORM 8: PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT

### FORM SAYS STARTING IMMEDIATELY DO NOT TRY SOME HEALTH CARE

The Physician Orders For Life-Sustaining Treatment form, often called the “POLST” form, lets a person say starting immediately do not try some health care listed in the form such as C.P.R. or heart defibrillation. This form is rarely used and usually only by the sickest or oldest people. The form is short and can be read fast (like by paramedics) and is often used outside a hospital or other facility, but it can be used inside these places too. Note, this POLST form has mostly replaced the older “Do-Not-Resuscitate form” which is very similar and still can be used in Arkansas but only covers resuscitation.

### FORM SAYS TO IMMEDIATELY NO LONGER TRY CERTAIN HEALTH CARE

In the form a person can say starting immediately certain medical care shouldn't be tried at all if they're incapacitated and health personnel are deciding what care to give. This form is rare and usually done only by the sickest or oldest people. A doctor or similar person must co-sign the form and think it proper (like a person likely will die from a terminal condition within a year or may soon be permanently unconscious). The main thing the form does is say do not try to “resuscitate” to restart or help the heart or breathing, and this includes cardio-pulmonary resuscitation (C.P.R.) which is pushing chest and blowing air in lungs, electric shock to restart heart or get a stable heartbeat, and machines helping or forcing breathing. There are many other treatment options a person can select in the form to say they should not be tried, and a doctor can explain the treatment options. A person with capacity still thinking OK can override the POLST form by clearly verbally requesting care or by just not showing paramedics or others the form. Note, if a person falls ill even if they have done this form they are still usually taken to get pain relief and other comfort care.

### FORM IS SIGNED BY A DOCTOR AND PERSON DOING THE FORM

The form must be signed by a doctor or similar health professional, and also by person doing the form or someone with authority for them. Doctors have copies of the form on colored paper that can be used. Once done a form usually is shown to places that may give health care so they can follow it. Some people keeps copies handy for themselves or family to show to paramedics and others who want to give care. A copy of the form might be kept on bedside table, on a home fridge, pinned to a shirt or in a pocket, or some people wear a special bracelet that doctors can help order. To cancel the form usually a person just tells all places shown the form that it is canceled.



# Arkansas Department of Health

54815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000

Governor Sarah Huckabee Sanders

Renee Mallory, RN, BSN, Interim Secretary of Health

Jennifer Dillaha, MD, Director

<http://www.healthy.arkansas.gov>

## HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY

### PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

First follow these orders, then contact **Physician**.

A copy of the executed POLST form is a legally binding, valid physician order. Any section not completed implies full treatment for that section. **POLST complements an Advance Directive and is not intended to replace that document.**

Patient Last Name:

Date form Prepared:

Patient First Name:

Patient Date of Birth:

Patient Middle Name:

**A**

Check One

#### CARDIOPULMONARY RESUSCITATION (CPR):

*If patient has no pulse and is not breathing.*

**NOTE ... If patient is NOT in cardiopulmonary arrest, follow orders in Sections B and C.**

- ☐ **Attempt Resuscitation/CPR** (Selecting CPR in Section A requires selecting Full Treatment in Section B)
- ☐ **Do Not Attempt Resuscitation/DNR** (Allow Natural Death)

**B**

Check One

#### MEDICAL INTERVENTIONS:

*If patient is found with a pulse and/or is breathing.*

- ☐ **Full Treatment** – primary goal of prolonging life by all medically effective means.  
In addition to treatment described in Selective Treatment and Comfort Treatment, use intubation, advanced airway interventions, mechanical ventilation, and cardioversion as indicated.  
☐ *Trial Period of Full Treatment.*
- ☐ **Selective Treatment** – goal of treating medical conditions while avoiding burdensome measures.  
In addition to treatment described in Comfort Treatment, use medical treatment and IVs as indicated. Do not intubate. May use non-invasive positive airway pressure. Generally avoid intensive care.  
☐ *Request transfer to hospital only if comfort needs cannot be met in current location.*
- ☐ **Comfort Treatment** – primary goal of maximizing comfort.  
Relieve pain and suffering with medication by any route as needed; use oxygen, suctioning, and manual treatment of airway obstruction. Do not use treatments listed in Full and Selective Treatment unless consistent with comfort goal. **Request transfer to hospital only if comfort needs cannot be met in current location.**

**C**

#### ADDITIONAL ORDERS:

**D**

#### INFORMATION AND SIGNATURES:

**Discussed with:** ☐ Patient (Patient Has Capacity) ☐ Legal Representative

- ☐ Advance Directive dated \_\_\_\_\_, available and reviewed
- ☐ Advance Directive not available.
- ☐ No Advance Directive.

**Signature of Physician** My signature below indicates to the best of my knowledge these orders are consistent with the patient's intentions and medical condition.

Print Physician Name:

Physician Phone Number:

Physician License #:

Physician Signature: *(required)*

Date:

**Signature of Patient or Legal Representative** I am aware my consent to this form is voluntary. By signing this form, a legal representative acknowledges this request regarding resuscitative measures is consistent with the known wishes of, and with the best interest of, the individual who is the subject of the form.

Print Name:

Relationship: *(write self if patient)*

Signature: *(required)*

Date:

Mailing Address:

Phone:

**SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED**

**HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY****Patient Information**

Full Name	Date of Birth	Gender
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**Physician**

Printed Name	Phone Number
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**Patient's Additional Contact**

Printed Name	Phone Number
--------------	--------------

**Directions for Physician Completing POLST Form****Completing the POLST Form**

- **No patient is required to complete a POLST form.** The patient (or legal representative) signs the form to indicate the voluntary nature of the form and that the contents of the form are consistent with the patient's desires and values.
- **Upon arrival at or admission to a hospital or other facility, the POLST establishes initial treatment of the patient.** After evaluation of the patient in the hospital or other facility, additional appropriate orders may be issued consistent with the patient's preferences.
- **POLST does not replace a living will or other advance directive.** When available, review the advance directive and POLST form to ensure consistency and update forms appropriately to resolve any conflicts.
- **POLST must be completed by a physician based on patient preferences and values and medical indications.**
- **The legal representative of a patient may sign the POLST form if the patient lacks capacity.** A legal representative may include a court-appointed guardian, an agent designated in an advance directive, a spouse, an adult child, an adult sibling, an adult relative, or another surrogate whom the physician believes has exhibited special care and concern for the patient, is familiar with the patient's values, and will make decisions according to the patient's wishes and values.
- **To be valid, a POLST form must be signed by a physician and the patient or legal representative.** Both signatures are required.
- **If a translated POLST form is used with the patient or legal representative, attach the translation to the signed English POLST form.**
- **It is recommended that the POLST form be printed on bright pink paper, so it can be easily recognized among the patient's paperwork.** Use of the original POLST form is encouraged, but photocopies and faxes are legal and valid under Arkansas law.
- **To avoid any potential misunderstanding about nutrition and hydration, it is strongly recommended that physicians include the following statement in Section C , Additional Orders: "Offer food and drink by mouth, if feasible and desired."**

**Using POLST**

- An incomplete section of the POLST form implies full treatment for that section.
- Section A:*
- If found pulseless and not breathing, no defibrillator (including automated external defibrillators) or chest compressions should be used on a patient who has chosen "Do Not Attempt Resuscitation."
- Section B:*
- When comfort cannot be achieved in the current setting, the patient, including someone with "Comfort-Focused Treatment," should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).
  - Non-invasive positive airway pressure includes continuous positive airway pressure (CPAP), bi-level positive airway pressure (BiPAP), and bag valve mask (BVM) assisted respirations.
  - IV antibiotics and hydration generally are not "Comfort-Focused Treatment." If a patient desires IV fluids, indicate "Selective Treatment" or "Full Treatment."
- Section C:*
- **To avoid any potential misunderstanding about nutrition and hydration, it is strongly recommended that physicians include the following statement in Section C , Additional Orders: "Offer food and drink by mouth, if feasible and desired."**
  - Depending on local EMS protocol, "Additional Orders" written in Section C may not be implemented by EMS personnel.

**Reviewing POLST**

It is recommended that POLST be reviewed periodically. In addition, review is recommended when:

- The patient is transferred from one care setting or care level to another; or
- There is a substantial change in the patient's health status; or
- The patient's treatment preferences change.

**Modifying and Voiding POLST**

- A patient with capacity can, at any time, request alternative treatment or revoke a POLST by any means indicating intent to revoke.
- It is recommended that revocation be documented by drawing a line through Sections A through C, writing "VOID" in large letters, and signing and dating this line. A legal representative of a patient who lacks capacity may request to modify the orders after consulting with the physician, based on the known desires of the patient or, if unknown, the patient's best interests.

For more information or a copy of the POLST form, visit [www.healthy.arkansas.gov](http://www.healthy.arkansas.gov).

**SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED**

# CHAPTER 15

## FORM 9: STATUTORY FORM POWER OF ATTORNEY

### FORM LETS POWER GO TO A PERSON OVER PROPERTY, MONEY, AND MORE

This form lets a person give power to someone to do things with the person's property, money, and more. Many call this a "Financial Power Of Attorney". This is a statutory form found at Arkansas Code § 28-68-301. Note, this form is often called "durable" since it uses the more common option of saying it still has power if the person is later incapacitated. Note, this form is effective once signed which is now standard and skips the old option of a "springing power of attorney" that only has power once an event occurs (like a person has fallen ill).

### FORM GIVES POWER TO LET SOMEONE DO THINGS

This form lets a person give power to do things with their money, property, records, and other things to someone trusted like a spouse, adult child, or friend. The person giving power is called the "Principal" and person getting power called the "Agent" (also called the "Attorney in Fact"). This form can let someone help pay bills, use accounts, buy or sell items, sign contracts, hire workers, take out debt, see records, and more. The form may help if a person is sick or busy, and may avoid having to use more serious legal options like a guardianship involving a court. A person who isn't incapacitated can overrule or fire the Agent at any time. Instructions for an Agent can be put but most skip this since if things are unclear a bank or others may delay or refuse to obey an Agent. In the form a person can also say who'd they'd prefer if ever needed to be Guardian of the Person to control their care, and Guardian of the Estate to control their property and money.

### IN FORM CAN SELECT NORMAL POWERS AND MORE RISKY POWERS TO GIVE

The form lets a person say which more normal powers are given in the "General Authority" part, and most people give all these powers (by initialing the "All Preceding Subjects" line) because they trust their Agent and if power is not clear a bank or others may hesitate or refuse to do what the Agent wants done. In the "Specific Authority" part some more risky powers can be given and most people skip all these powers.

### DUE TO RISKS MANY SKIP THIS FORM OR CONSULT A LAWYER

Many people skip this form or first see a lawyer. Using this form is risky and can lead to harm since the Agent can be wasteful with money, commit fraud or theft, by carelessness allow other harms, or do worse. A person acting as Agent has a duty to be loyal and act reasonably and can be sued for any harm, but they may later be out of money to pay. Usually banks and others can't be blamed for obeying an Agent's orders. The law is complex and basic acts may be fine for Agent like paying bills but some acts may be improper like making gifts, risky investments, or unusual acts. It is best if a person not their Agent does unusual things.

### PERSON SIGNS FORM IN FRONT OF A NOTARY

A person must sign the form in front of a notary who then notarizes it. Once it is done some cautious people quickly show the form to banks and similar places to help explain they should follow the form later. When an Agent signs anything it should be like, for example: "Jane Smith signing as Agent under a Power of Attorney for Ann Hill". To cancel the form a person should tell the Agent and take back copies and maybe tell places shown the form. The form's last page is a "Certification" that banks may later ask Agent to sign.

# ARKANSAS

## STATUTORY FORM POWER OF ATTORNEY

### IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68.

This power of attorney does not authorize the agent to make healthcare decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

**If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.**

### DESIGNATION OF AGENT

I, \_\_\_\_\_, name the following person as my agent:  
(Name of Principal)

Name of Agent: \_\_\_\_\_

Agent's Address: \_\_\_\_\_

Agent's Telephone Number: \_\_\_\_\_



## DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent: \_\_\_\_\_

Successor Agent's Address: \_\_\_\_\_

Successor Agent's Telephone Number: \_\_\_\_\_

## GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- ☐ Real Property
- ☐ Tangible Personal Property
- ☐ Stocks and Bonds
- ☐ Commodities and Options
- ☐ Banks and Other Financial Institutions
- ☐ Operation of Entity or Business
- ☐ Insurance and Annuities
- ☐ Estates, Trusts, and Other Beneficial Interests
- ☐ Claims and Litigation
- ☐ Personal and Family Maintenance
- ☐ Benefits from Governmental Programs or Civil or Military Service
- ☐ Retirement Plans
- ☐ Taxes
- ☐ All Preceding Subjects

## GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

**(CAUTION: Granting any of the following will give your agent authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)**

- ☐ Create, amend, revoke, or terminate an inter vivos trust
- ☐ Make a gift, subject to the limitations of § 28-68-217 of the Uniform Power of Attorney Act and any special instructions in this power of attorney

- ( ) Create or change rights of survivorship
- ( ) Create or change a beneficiary designation
- ( ) Authorize another person to exercise the authority given under this power of attorney
- ( ) Waive the principal's right to be a beneficiary of a joint and survivor annuity,  
including a survivor benefit under a retirement plan
- ( ) Exercise fiduciary powers that the principal has authority to delegate

### **LIMITATION ON AGENT'S AUTHORITY**

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

### **SPECIAL INSTRUCTIONS (OPTIONAL)**

You may give special instructions on the following lines:

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### **EFFECTIVE DATE**

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

### **NOMINATION OF GUARDIAN (OPTIONAL)**

If it becomes necessary for a court to appoint a guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for guardian of my estate: \_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

Name of Nominee for guardian of my person: \_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

## RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

## SIGNATURE AND ACKNOWLEDGMENT

\_\_\_\_\_  
Your Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Your Name Printed

\_\_\_\_\_  
Your Telephone Number

\_\_\_\_\_  
Your Address

STATE OF ARKANSAS                    )  
  )  
COUNTY OF \_\_\_\_\_ )

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the individual, \_\_\_\_\_. The individual personally appeared before me and signed above or acknowledged the signature above as his or her own on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. I declare under penalty of perjury that the individual appears to be of sound mind and under no duress, fraud, or undue influence.

\_\_\_\_\_  
Signature of Notary Public

## IMPORTANT INFORMATION FOR AGENT

### Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

- (1) do what you know the principal reasonably expects you to do with the principal's property or,

if you do not know the principal's expectations, act in the principal's best interest;

- (2) act in good faith;
- (3) do nothing beyond the authority granted in this power of attorney; and
- (4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as “agent” in the following manner:

*(Principal's Name) by (Your Signature) as Agent*

Unless the Special Instructions in this power of attorney state otherwise, you must also:

- (1) act loyally for the principal's benefit;
- (2) avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) act with care, competence, and diligence;
- (4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) cooperate with any person that has authority to make healthcare decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- (6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

### **Termination of Agent's Authority**

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) death of the principal;
- (2) the principal's revocation of the power of attorney or your authority;
- (3) the occurrence of a termination event stated in the power of attorney;
- (4) the purpose of the power of attorney is fully accomplished; or
- (5) if you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

### **Liability of Agent**

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68. If you violate the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68, or act outside the authority granted, you may be liable for any damages caused by your violation.

**If there is anything about this document or your duties that you do not understand, you should seek legal advice.**

**AGENT'S CERTIFICATION AS TO THE  
VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY**

(to be done later upon bank request)

STATE OF ARKANSAS

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_ (Name of Agent), certify under penalty of perjury that \_\_\_\_\_ (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated \_\_\_\_\_.

I further certify that to my knowledge:

(1) the Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) if the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4) \_\_\_\_\_

\_\_\_\_\_  
(Insert other relevant statements)

**SIGNATURE AND ACKNOWLEDGMENT**

\_\_\_\_\_  
Agent's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agent's Name Printed

\_\_\_\_\_  
Agent's Telephone Number

\_\_\_\_\_  
Agent's Address

This document was acknowledged before me on \_\_\_\_\_ (Date),  
by \_\_\_\_\_ (Name of Agent).

(Seal, if any)

\_\_\_\_\_  
Signature of Notary

My commission expires: \_\_\_\_\_

## **CHAPTER 16**

### **FORM 10: POWER OF ATTORNEY FOR MINOR**

#### **FORM LETS PARENT SHARE POWER WITH SOMEONE OVER CHILD UNDER 18**

This form lets a parent of a child under age 18 share power over them with someone named in the form. A legal aid group has a similar form at: [\*a.arlawhelp.org/wills-and-estates/power-of-attorney/minors\*](http://a.arlawhelp.org/wills-and-estates/power-of-attorney/minors). Most but not all states now allow this kind of form.

#### **FORM CAN GIVE POWER TO SOMEONE OVER CHILD UNDER 18**

In the form a parent called in the form the “Principal” can give some power over a child under 18 to a person they name who is called in the form the “Agent” (or the “Attorney-in-Fact”). The person who did the form can usually fire the Agent or overrule a decision. Often given power is a relative, friend, or teacher who now or later may watch a child for the parent. This form is sometimes used if a parent or a child are separated for work, school, training, drug rehab, sports, prison, immigration, military, or long visits. This form also can be done if a person watches a child for a just few hours but very often, like if children each day after school go stay with a friend. The form is usually not done for brief or normal situations like babysitter, daycare, short time with relatives, or anytime a parent can come quickly. This form can avoid need for serious legal actions like a Guardianship or a Change of Custody at court. In the form most people select the option to say power of the form has no set time to end rather than write a date for this.

#### **FORM IS SIGNED BY PARENT WITH A NOTARY**

The form must be signed by a parent in front of a notary who then notarizes it. Some people change the form to add room for a 2nd parent to sign to make it likelier people like doctors and teachers trust the form. Once done some cautious people quickly show the form to schools and doctors to help explain they should follow it later. Once signed usually a parent gives the form to the person getting power to use when needed. To cancel things a person should tell the Agent and maybe also tell places that saw the form.

# **POWER OF ATTORNEY FOR MINOR**

TO ALL WHOM THESE PRESENTS ARE KNOWN:

That I, \_\_\_\_\_, of \_\_\_\_\_ County, Arkansas, being the natural parent of \_\_\_\_\_ (called hereafter the "child"), appoint \_\_\_\_\_ of \_\_\_\_\_ County, Arkansas, **my true and lawful attorney-in-fact for me and in my name, place and stead and in my behalf in matters involving the child**, and to do and perform all of the following responsibilities and have all the rights in connection therewith:

1. Perform and act as and for me in a parental capacity as and to the child;
2. Give consent and permission for any kind of medical care and treatment, and to sign any papers to have the child admitted to a hospital for such purpose, or as may be required to maintain the health of the child;
3. Give consent and permission for enrollment in and admission to school and to resolve problems arising from school attendance, and to sign any papers necessary for such purpose or sign other documents relating to the child's welfare at school;
4. Perform any act necessary to obtain relief or aid that might benefit the child;
5. Perform any other acts for support, health, and general care of the child as may be required or necessary.
6. I hereby specifically give and grant to my said attorney-in-fact, full power and authority to do and perform any and all acts required to protect and promote the welfare of the child, as fully and for all intents and purposes as I might or could do if I were personally present at the time thereof, hereby ratifying and confirming all that my said Attorneys may or shall lawfully do or cause to be done by virtue of this Power-of-Attorney and the rights and powers herein granted.
7. This Power of Attorney appointing my said attorney-in-fact as my agent and performing and acting for me in a parental capacity for the child:  
(select one)  
☐ will be revoked automatically on \_\_\_\_\_ (date); or  
☐ will not be revoked automatically.
8. It is **not** my intention to relinquish my parental rights in and to my child.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature

[illegible]

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came the parent,  
to me known to be the person described in and who executed the foregoing instrument,  
and acknowledged that he/she executed the same as a free act and deed, and that  
\_\_\_\_\_ is the parent of said children.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

Signature of Notary Public



# CHAPTER 17

## FORM 11: DECLARATION OF FINAL DISPOSITION

### LETS PERSON BE NAMED AND INSTRUCTIONS GIVEN TO HANDLE DEAD BODY

This form lets someone be named and instructions given by a person to control their body after death (their “remains”) and related things like funeral, burial, cremation, ceremonies, and buying things for all this.

### CAN NAME PERSON TO CONTROL DEAD BODY AND GIVE INSTRUCTIONS

This form lets a person designate someone as their Agent to control the person’s dead body and all related issues like funeral, burial, cremation, ceremonies, and buying goods and services for these. If this form is not done under state law control of all this is by the closest family member (in order this means a spouse, children, parents, then siblings). People do this form rarely usually if it seems family may be too upset while mourning, be bad with money, or do unwanted things. Payment for these things comes from pre-paid funeral accounts, insurance, and a dead person’s money and property, and family and Executor are legally required to help arrange payment to do as the dead person wanted or as their Agent wants. The form has a spot for instructions but many people skip this and trust Agent or family to do what a person mentioned they wanted. Some people use the instructions area to say what arrangements they’ve made. Note, more and more people write they want “Direct Burial” or “Direct Cremation”, and this is an affordable option done fast in a few days and without family watching, and later family often hold an informal event (often called a “Celebration Dinner”) either without the body at all or when family later get the ashes or can visit the grave. Normally people including family should do the funeral, burial, and other things a decedent wanted if their estate can afford it. About half of people now do cremation which is more affordable.

### SIGN FORM WITH 2 WITNESSES

To complete the form it is signed by a person in front of 2 people as witnesses who then sign too. A person named as Agent in the form can’t be a witness. Once done the form can be given to someone to hold and use quickly when needed, or it can be put in a place it can be found quickly within just a few days of a death (like with other important papers or in a desk drawer).

# DECLARATION OF FINAL DISPOSITION

(Arkansas Code § 20-17-102)

*A person has a right to control their body after death if they make their wishes clear, and this applies regardless of what family want to do.*

*In this form a person may name a person as agent to carry out their funeral, burial, cremation, and related wishes rather than let closest family control this as state law normally provides. The agent can be given written instructions or can be trusted to do what was discussed with them.*

*Some people use this form to write instructions but do not name an agent here and instead they trust family to follow the written instructions.*

## **AGENT**

I hereby appoint \_\_\_\_\_  
to act as my agent in carrying out the disposition of my body. My agent:

(Check only one option)

\_\_\_\_\_ May make any and all decisions about the disposition of my body.

\_\_\_\_\_ Shall follow the instructions I have written below.

## **INSTRUCTIONS**

I hereby direct my family, any agent, and others that my body be disposed of in the following manner: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(attach additional pages of paper if needed)

## **SIGNING**

To be legally valid this document must be signed by a person before 2 witnesses who then also sign the document as witnesses.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

First Witness Signature: \_\_\_\_\_

Second Witness Signature: \_\_\_\_\_

# **APPENDIX: SAMPLE FILLED OUT FORMS**

TO GET FORMS TO USE PEOPLE CAN:

- (1) PHOTOCOPY BOOK PAGES,
- (2) TEAR OUT PAGES FROM A BOOK, OR
- (3) DOWNLOAD BOOK WITH FORMS FROM WWW.DAVENPORTPUBLISHING.COM  
AND USUALLY PDF FORM AT IS BEST TO AVOID SPACING/FORMAT CHANGES.

EMAIL ANY COMMENTS TO DAVENPORTPRESS@GMAIL.COM.

On the next pages to show how it can be done are some sample filled out legal forms.

People can add words to legal forms by computer or typewriter to be neater, but many people just by hand use pen, marker, or pencil to handwrite words into forms.

It is not required but is bit better if signatures are in ink or marker not pencil.

Many parts of the forms especially Will gifts can be left empty and unfilled.

Anyone can fill in words in legal form not just the person doing the form, like a friend with neat writing can fill in all the words, addresses, and dates that are needed.  
Only the final signatures must be done by each person who wants the form.

To add words in form by pen, pencil, typewriter, or computer any of these is fine:

"I appoint John Doe as Agent" ,  
"I appoint John Doe as Agent",  
"I appoint John Doe as Agent".

When doing forms it may help to know "respectively" means "in order just stated".

People need not worry about neatness or small mistakes, and a document is usually fine if those people who knew a decedent in life can tell the likely meaning.

**Sample Filled Out Form: Last Will and Testament (Standard)**  
**with Gifts section skipped to not bother making small gifts**

## LAST WILL AND TESTAMENT

I, Paul Samuel Maxwell, of Pulaski County, Arkansas, do revoke all prior Wills, Testaments, and Codicils, and do make, publish, and declare this as my Will. I am of sound mind and under no duress or undue influence and acting voluntarily.

**1. GIFTS.** I give these gifts in this Will, but to get a gift in this section the recipient must survive me except as otherwise stated below.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

I give \_\_\_\_\_ to \_\_\_\_\_.

**2. SEPARATE WRITINGS.** I may do writings separate from this Will to gift tangible personal property as allowed by state law, and all such writings should be followed. However such writing not found within 90 days of my death is canceled and has no effect. A gift in such a writing to a person who does not survive me is canceled and has no effect. This Will does not revoke any such writings that now exist.

**3. RESIDUE.** I give the rest and residue and remainder of my estate, my money and property of any kind and nature, and anything I have an interest in so long as it was not transferred by other Will provisions (all of which is called the “residue”), as follows:

a) to Susan Lee Maxwell who survive me with persons just named who survive me taking the share of non-survivors, then

b) to Oscar David Maxwell and Jennifer Judy Tabor and if any of those just named do not survive me their part goes to their lineal descendants, per stirpes.

**4. ADMINISTRATION.** I name and appoint Susan Lee Maxwell as Personal Representative including for me, my Will, and my estate.

**5. MISCELLANEOUS.** The following applies to this Will and generally.

My main residence is in the state of Arkansas and its laws should apply to this Will.

If a gift or section in this Will reasonably mentions survival in any way then such survival is an absolute condition and anti-lapse laws or similar have no effect.

Priority of Will gifts of the same type is based on the order they are written.

In this document no unfilled part is a mistake and residue spaces may be left blank.

The words “give” and “gift” also means a devise, bequest, grant, legacy, or similar.

A gift of property no longer owned by Testator at death shall lapse and be of no effect including no payment of money shall be done in its place, and all without ademption.

Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive Testator their part to them lapses and instead goes to other surviving recipients.

I am not providing by Will gifts or other ways for some of my children or other heirs, and this is intentional and not an omission or mistake to remedy.

No gift or transfer I made during my life to a person reduces or offsets a Will gift, unless during my life I expressly usually called it a loan or advancement.

Unless another meaning is shown by context use of plural includes the singular and vice versa, and also masculine, feminine, and neuter words are used interchangeably.

Unless another meaning is shown “they” means both one person and multiple persons.

Unless a Will specifically says otherwise a) a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, b) a recipient of a Will gift of property takes it subject to debts, c) no recipient of a Will gift who later loses property gifted to them to a debtor or who pays to avoid foreclosure or other loss may require the estate or anyone to pay recipient back, do exoneration, or do or pay anything.

I request and authorize any informal, summary, and quick probate or similar action. Any Personal Representative may act independently with no supervision of any court, including independent administration, and with no inventory, appraisal, or other action.

I give any Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts any time they in their sole discretion chooses. Any Personal Representative is given all powers that may be given or held by law including powers listed in Ark. Code Ann. § 28-69-304 (1987) which is hereby incorporated here.

Any Personal Representative paying for something should be paid all their expenses and costs including any amounts they pay or advance to benefit the estate.

Any lawyer for the Estate or a Personal Representative should be paid a sum that is

agreed upon and not according to any fee schedule or any percentage of the estate.

Any Personal Representative has sole discretion how to balance people's feelings and pick property or divide a gift to do a general gift or a gift to multiple persons.

Any Guardian of the Estate or a Custodian managing a minor's property or money may use or invade the principal, sell the property, and do any other action without court action.

If context permits the terms Personal Representative, Executor, and Administrator are interchangeable as if all were written, and Guardian of the Estate is interchangeable with Conservator and Custodian, and the terms Residue and Residuary are interchangeable.

Any Personal Representative, Executor, Administrator, Guardian including of the person or estate of a minor, Conservator, Custodian, and any fiduciary under this Will or otherwise shall qualify and serve without bond, surety, security, surety bond, or similar.

If someone dies within 120 hours of me they shall be deemed to have died before me.

If part of this Will is by law invalid or unenforceable other provisions remain in effect.

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the Arkansas Uniform Transfers to Minors Act or a similar law anywhere. They may pick the Custodian including themselves but if they do not I name for this the person named in this Will to be Guardian of the Estate.

### **TESTATOR**

IN WITNESS WHEREOF, I now execute this instrument in Little Rock, Arkansas, in the presence of the undersigned attesting witnesses to whom I declare this to be my Will on this 22nd day of June, 2022.

*Paul Samuel Maxwell*

Testator's Signature

### **WITNESSES**

We, the undersigned, do hereby certify that the Testator in the foregoing instrument and Will subscribed the same in our presence at the time declaring to us that said instrument was their Will; and we at the Testator's request and in their presence and in the presence of each other, now sign our names as attesting witnesses.

*Eve Mable Rogers*

Signature of Witness

14 2nd St., Little Rock, AR 71601

Address of Witness

*Mary Ann Moon*

Signature of Witness

835 Buffalo Road, Boise, ID 83701

Address of Witness

**Sample Filled Out Form: Last Will and Testament (Guardian)**  
**with Residue Clause using percentages**

## **LAST WILL AND TESTAMENT**

I, Paul Brian Kent, of Saline County, Arkansas, do revoke all prior Wills, Testaments, and Codicils, and do make, publish, and declare this as my Will. I am of sound mind and under no duress or undue influence and acting voluntarily.

**1. GIFTS.** I give these gifts in this Will, but to get a gift in this section the recipient must survive me except as otherwise stated below.

I give big oak table to Anne J. Smith .

I give \$5,000 to Loretta Marsha Switt .

I give 63 Ivy Road, Jonesboro, Arkansas to Kenneth Victor Poppler.

I give all real property and fixtures I own in Pulaski County, Arkansas to Amy Marie Fox and Pamela Sue Fox .

I give 903 Iceberg Road, Anchorage, Alaska to James Eric Hanson .

I give Bronze Roman Lamp to Anne Kilby and Kevin Kilby.

I give wedding ring to Ruth Jones.

I give all jewelry not given above to Kay Baxter .

I give \$781.35 to Mary Natalie Swanson .

I give Wells Fargo acct ending in #8923 to Lawrence Deer a hunting buddy .

I give 1998 Ford truck to John Rupert Smith .

I give all spare tires and auto parts I own to Victor Perez my mechanic .

I give \$1000 to each of my grandchildren .

**2. SEPARATE WRITINGS.** I may do writings separate from this Will to gift tangible personal property as allowed by state law, and all such writings should be followed. However such writing not found within 90 days of my death is canceled and has no effect. A gift in such a writing to a person who does not survive me is canceled and has no effect. This Will does not revoke any such writings that now exist.

**3. RESIDUE.** I give the rest and residue and remainder of my estate, my money and property of any kind and nature, and anything I have an interest in so long as it was not transferred by other Will provisions (all of which is called the “residue”), as follows:

a) to Ruth May Kent my wife who survive me with persons just named who survive me taking the share of non-survivors, then

b) to 45% to Oscar Elliot Kent my son, and 45% to Karen Lisa Lundy my daughter, and 10% to Oscar Sanchez my friend and if any of those just named do not survive me their part goes to their lineal descendants, per stirpes.

**4. ADMINISTRATION.** I name and appoint Ruth May Kent as Personal Representative including for me, my Will, and my estate.

**5. GUARDIAN.** I hereby name Karen Lisa Fox my sister to be if needed the Guardian of the Person of any minor child of mine and to have care, authority, control, custody, and other control of them. I also name this same person to be if needed Guardian of the Estate of any minor child of mine or other minor and their property, money, and estate.

**6. MISCELLANEOUS.** The following applies to this Will and generally.

My main residence is in the state of Arkansas and its laws should apply to this Will.

If a gift or section in this Will reasonably mentions survival in any way then such survival is an absolute condition and anti-lapse laws or similar have no effect.

Priority of Will gifts of the same type is based on the order they are written.

In this document no unfilled part is a mistake and residue spaces may be left blank.

The words “give” and “gift” also means a devise, bequest, grant, legacy, or similar.

A gift of property no longer owned by Testator at death shall lapse and be of no effect including no payment of money shall be done in its place, and all without ademption.

Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive Testator their part to them lapses and instead goes to other surviving recipients.

I am not providing by Will gifts or other ways for some of my children or other heirs, and this is intentional and not an omission or mistake to remedy.

No gift or transfer I made during my life to a person reduces or offsets a Will gift, unless during my life I expressly usually called it a loan or advancement.

Unless another meaning is shown by context use of plural includes the singular and vice versa, and also masculine, feminine, and neuter words are used interchangeably.

Unless another meaning is shown “they” means both one person and multiple persons.

Unless a Will specifically says otherwise a) a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, b) a recipient of a Will gift of property takes it subject to debts, c) no recipient of a Will gift who later loses property gifted to them to a debtor or who pays to avoid foreclosure or other loss may



require the estate or anyone to pay recipient back, do exoneration, or do or pay anything.

Any Personal Representative paying for something should be paid all their expenses and costs including any amounts they pay or advance to benefit the estate.

Any lawyer for the Estate or a Personal Representative should be paid a sum that is agreed upon and not according to any fee schedule or any percentage of the estate.

Any Personal Representative has sole discretion how to balance people's feelings and pick property or divide a gift to do a general gift or a gift to multiple persons.

The residue includes lapsed or failed gifts, insurance paid to the estate, any inheritances owed, and property I have or had a power of appointment or testamentary disposition over.

Any Personal Representative, Executor, Administrator, Guardian including of the person or estate of a minor, Conservator, Custodian, and any fiduciary under this Will or otherwise shall qualify and serve without bond, surety, security, surety bond, or similar.

If someone dies within 120 hours of me they shall be deemed to have died before me.

If part of this Will is by law invalid or unenforceable other provisions remain in effect.

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the Arkansas Uniform Transfers to Minors Act or a similar law anywhere. They may pick the Custodian including themselves but if they do not I name for this the person named in this Will to be Guardian of the Estate.

### **TESTATOR**

IN WITNESS WHEREOF, I now execute this instrument in Rogers, Arkansas, in the presence of the undersigned attesting witnesses to whom I declare this to be my Will on this 30th day of December, 2019.

*Paul Brian Kent*  
Signature of Testator

### **WITNESSES**

We, the undersigned, do hereby certify that the Testator in the foregoing instrument and Will subscribed the same in our presence at the time declaring to us that said instrument was their Will; and we at the Testator's request and in their presence and in the presence of each other, now sign our names as attesting witnesses.

*Olivia Joy Pawlenty*  
Signature of Witness

87 Forest Road, Bentonville, AR 70001  
Address of Witness

*Roy Felix Pawlenty*  
Signature of Witness

87 Forest Road, Bentonville, AR 70001  
Address of Witness

## **LAST WILL AND TESTAMENT**

I, **David Eric Smith**, of **Pulaski County**, Arkansas, do revoke all prior Wills, Testaments, and Codicils, and do make, publish, and declare this as my Will. I am of sound mind and under no duress or undue influence and acting voluntarily.

**1. GIFTS.** I give these gifts in this Will, but to get a gift in this section the recipient must survive me except as otherwise stated below.

I give \$500 to each one of my brothers, sisters, and cousins.

I give \$1000 to Baker Food Shelf on Smith Road in Conway, Arkansas.

**2. SEPARATE WRITINGS.** I may do writings separate from this Will to gift tangible personal property as allowed by state law, and all such writings should be followed. However such writing not found within 90 days of my death is canceled and has no effect. A gift in such a writing to a person who does not survive me is canceled and has no effect. This Will does not revoke any such writings that now exist.

**3. RESIDUE.** The rest and residue and remainder of my estate, my property of any kind and nature, and anything I have an interest in, I give to **Adam Michael Smith and Ann Sue Baker who survive me** and to lineal descendants per stirpes of a person just named who did not survive me.

**4. ADMINISTRATION.** I name and appoint **Ann Sue Baker** as Personal Representative including for me, my Will, and my estate.

**5. MISCELLANEOUS.** The following applies to this Will and generally.

My main residence is in the state of Arkansas and its laws should apply to this Will.

If a gift or section in this Will reasonably mentions survival in any way then such survival is an absolute condition and anti-lapse laws or similar have no effect.

Priority of Will gifts of the same type is based on the order they are written.

In this document no unfilled part is a mistake and residue spaces may be left blank.

The words “give” and “gift” also means a devise, bequest, grant, legacy, or similar.

A gift of property no longer owned by Testator at death shall lapse and be of no effect including no payment of money shall be done in its place, and all without ademption.

Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do

not survive Testator their part to them lapses and instead goes to other surviving recipients.

I am not providing by Will gifts or other ways for some of my children or other heirs, and this is intentional and not an omission or mistake to remedy.

No gift or transfer I made during my life to a person reduces or offsets a Will gift, unless during my life I expressly usually called it a loan or advancement.

Unless another meaning is shown by context use of plural includes the singular and vice versa, and also masculine, feminine, and neuter words are used interchangeably. Unless another meaning is shown “they” means both one person and multiple persons.

I give any Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts any time they in their sole discretion chooses. Any Personal Representative is given all powers that may be given or held by law including powers listed in Ark. Code Ann. § 28-69-304 (1987) which is hereby incorporated here.

Any Personal Representative paying for something should be paid all their expenses and costs including any amounts they pay or advance to benefit the estate.

Any lawyer for the Estate or a Personal Representative should be paid a sum that is agreed upon and not according to any fee schedule or any percentage of the estate.

Any Personal Representative has sole discretion how to balance people’s feelings and pick property or divide a gift to do a general gift or a gift to multiple persons.

Any Guardian of the Estate or a Custodian managing a minor’s property or money may use or invade the principal, sell the property, and do any other action without court action.

If context permits the terms Personal Representative, Executor, and Administrator are interchangeable as if all were written, and Guardian of the Estate is interchangeable with Conservator and Custodian, and the terms Residue and Residuary are interchangeable.

The residue includes lapsed or failed gifts, insurance paid to the estate, any inheritances owed, and property I have or had a power of appointment or testamentary disposition over.

Any Personal Representative, Executor, Administrator, Guardian including of the person or estate of a minor, Conservator, Custodian, and any fiduciary under this Will or otherwise shall qualify and serve without bond, surety, security, surety bond, or similar.

If someone dies within 120 hours of me they shall be deemed to have died before me.

If part of this Will is by law invalid or unenforceable other provisions remain in effect.

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the Arkansas Uniform Transfers to Minors Act or a similar law anywhere. They may pick the Custodian including themselves but if they do not I name for this the person named in this Will to be Guardian of the Estate.

**TESTATOR**

IN WITNESS WHEREOF, I now execute this instrument in **North Little Rock**, Arkansas, in the presence of the undersigned attesting witnesses to whom I declare this to be my Will on this **21st** day of **June**, 2021.

*David Eric Smith*

Signature of Testator

**WITNESSES**

We, the undersigned, do hereby certify that the Testator in the foregoing instrument and Will subscribed the same in our presence at the time declaring to us that said instrument was their Will; and we at the Testator's request and in their presence and in the presence of each other, now sign our names as attesting witnesses.

*Harriet Potter*

Signature of Witness

*42 Spruce St, Sherwood, AR 70508*

Address of Witness

*Ann Paula Blom*

Signature of Witness

*370 Broadway Ave, Little Rock, AR 70011*

Address of Witness

Sample Filled Out Form: Proof of Will

# PROOF OF WILL

(Arkansas Code § 28-25-106)

STATE OF ARKANSAS            )  
  ) ss.  
COUNTY OF PULASKI    )

We, Harriet Potter and Ann Paula Blom, on oath state that we are the subscribing witnesses to the attached written instrument, dated the 21st day of June, 2021, which purports to be the Will of David Eric Smith as Testator.

On the execution date of the instrument the Testator, in the presence of all of us, signed the instrument at the end and declared the instrument to be the Testator's Will, and requested that we attest to their execution of it.

Then, in the presence of the Testator and all other witnesses each of us signed our names as an attesting witness, and our names appear below the signature of the Testator on the Will.

At the time of execution of the instrument, the Testator appeared to be 18 years of age or older, of sound mind, and acting without undue influence, fraud or restraint.

Signature of Witness: Harriet Potter

Address of Witness: 42 Spruce St, Sherwood, AR 70508

Signature of Witness: Ann Paula Blom

Address of Witness: 370 Broadway Ave, Little Rock, AR 70011

Subscribed and sworn to before me on this 21st day of June, 2021.

Patrick H. Gaffney  
Notary



## Sample Filled Out Form: Tangible Personal Property List

### TANGIBLE PERSONAL PROPERTY LIST

In this writing are gifts of tangible personal property to occur at my death, but this writing if not found by someone within 90 days of my death is canceled.

I may do multiple pages of these writings which should all be seen as a single document with the more recently done page controlling if any gifts conflict.

If a person getting a gift below does not survive me such gift is void and canceled.

PROPERTY ITEMS		NAMES OF RECIPIENTS
1998 Ford Truck	to	Samantha Bell
1.3 carat diamond ring + Irish rings	to	Ann Sue Reed
14 ft power boat + kayak + paddles	to	L. Wheeler
Amish style bench	to	Reba Stewart
glass table, telescope, umbrellas	to	Rebecca Stewart
Irish wood cups, oak platter, red vase	to	Mary and Cindy Lott
painting of sailboat in storm	to	Mary Lott
chainsaw marked with 382937	to	Mary Lott
chainsaw marked with 89930	to	Matt Smith
antique lanterns + repair kits	to	Sue Wu maid at Hart Hotel
oak lamp kept on porch	to	Mary Kay Poppler
sewing machines	to	Mary Kay Poppler
rocking chair bought in Oregon	to	Don Winkler boat mechanic
all fishing poles and fishing nets	to	Joe "Fish" Hoss, fishing pal
hats at cabin	to	Ken Baker
	to	
	to	
	to	
	to	

DATE: 8-15-2002 SIGNED: David Eric Smith