

# DAVENPORT'S VIRGINIA WILLS AND ESTATE PLANNING LEGAL FORMS



**DAVENPORT'S  
VIRGINIA WILLS  
AND  
ESTATE PLANNING  
LEGAL FORMS  
2024 EDITION**

**written by attorneys  
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### **PUBLICATION DATA**

(informal, library may use different data)

Names: Russell, Alex, 1972- author; Maxwell, Robert, 1960- author

Title: Davenport’s Virginia Wills And Estate Planning Legal Forms 2024 Edition

Other Titles: Davenport’s Wills

Description: Davenport Publishing 2024

Suggested Identifiers: LCCN 2021909030, 9798355688004, 9798748423373

Subjects: LCSH: Wills--United States;  
Wills--United States--Forms;  
Estate Planning--United States;  
Legal Forms

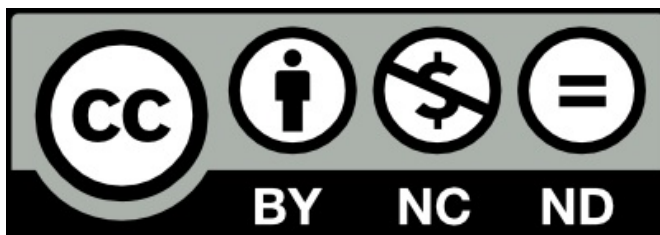
Classification: LFF KF755 .C55 2024 (or as library chooses)  
DDC 346.73 Rus--dc24 (or as library chooses)

9 8 7 6 5 4 3 2 1 0 0 0 0 0 2 4

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<b><u>CHAPTER</u></b>	<b><u>TABLE OF CONTENTS</u></b>	<b><u>PAGE</u></b>
CHAPTER 1 – BOOK BASICS AND LIST OF FORMS		1
CHAPTER 2 – TERMS, PROPERTY LAW, AND HELPFUL INFORMATION FORM		4
CHAPTER 3 – WILL BASICS		8
CHAPTER 4 – WILL GIFTS INCLUDING RESIDUE CLAUSE		10
CHAPTER 5 – DEBT, MARRIAGE, AND YOUNG CHILD ISSUES		15
CHAPTER 6 – BASIC IDEAS ABOUT HEALTH CARE FORMS		18
<hr/>		
	<b>WILL RELATED FORMS</b>	
CHAPTER 7 – FORM 1: WILL (STANDARD)		19
CHAPTER 8 – FORM 2: WILL (GUARDIAN)		23
CHAPTER 9 – FORM 3: SELF-PROVING AFFIDAVIT		27
CHAPTER 10 – FORM 4: TANGIBLE PERSONAL PROPERTY MEMORANDUM		29
CHAPTER 11 – FORM 5: HANDWRITTEN WILL		31
<hr/>		
	<b>HEALTH CARE FORMS</b>	
CHAPTER 12 – FORM 6: ADVANCE DIRECTIVE FOR HEALTH CARE		33
CHAPTER 13 – FORM 7: PHYSICIAN ORDERS FOR SCOPE OF TREATMENT		37
CHAPTER 14 – FORM 8: DURABLE DO NOT RESUSCITATE ORDER		40
<hr/>		
	<b>GIVING POWER FORMS</b>	
CHAPTER 15 – FORM 9: DURABLE POWER OF ATTORNEY		42
CHAPTER 16 – FORM 10: POWER OF ATTORNEY OVER CHILD		52
CHAPTER 17 – FORM 11: DESIGNATION TO CONTROL DISPOSITION OF REMAINS		57
<hr/>		
APPENDIX – HOW TO GET FORMS AND SAMPLE FILLED OUT FORMS		59

# CHAPTER 1

## BOOK BASICS AND LIST OF FORMS

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

This book helps people in Virginia do legal documents to control their property, money, children, health care, funeral, and more if later they are absent, sick, or dead. Doing this is usually called “Estate Planning”. This book has 11 ready to use Virginia legal forms in 3 areas, but most people use just a few of these 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 (Guardians)** – Will with part added to name a person to be Guardian to care for a minor child under 18 if needed (like if both parents later die) and also manage a minor child’s property and money.

**Form 3. Self-Proving Affidavit** – optional form done with a Will to later help show it was signed properly.

**Form 4. Tangible Personal Property Memorandum** – lets a person easily write out more gifts to occur after death, but this can only cover “tangible personal property” like furniture, cars, jewelry, and clothes.

**Form 5. Handwritten Will** – this Will can be done more easily by skipping the usual 2 witnesses, but by law to legally allow this it must be all handwritten by the person doing the Will.

#### **HEALTH CARE FORMS**

**Form 6. Advance Directive For Health Care** – names person to if ever needed control health care (this part is often called a “Health Care Power Of Attorney”) and gives health care instructions, and also can say to stop health care if later doctors think a person is incapacitated, in bad health, and more care won’t help (this part is often called a “Living Will”).

**Form 7. Physician Orders For Scope Of Treatment** – does serious act of saying immediately don’t try health care listed in the form like C.P.R. or tube feeding and antibiotics, and the form is short so it can be read fast by people, like paramedics, but it is mostly used inside places (this is often called a “P.O.S.T.” form).

**Form 8. Durable Do Not Resuscitate Order** – does the serious act of saying immediately don’t try “resuscitation” (basically cardio-pulmonary resuscitation (C.P.R.)), and this form is short so it can be read fast like by paramedics, and it is sometimes used inside health care facilities (this is often called a “D.N.R.” form).

#### **GIVING POWER FORMS**

**Form 9. Durable Power Of Attorney** – lets power over money, property, and other things be shared during a person’s life with a trusted person like a spouse, adult child, or friend so they can do things to help.

**Form 10. Power Of Attorney Over Child** – lets a parent share power over a child under 18 with a person so they have power to help care for a child including control their health care.

**Form 11. Designation To Control Disposition of Remains** – lets a person give instructions and name a person to after their death control their funeral and related matters.

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

This book is only for Virginia since Estate Planning laws and legal documents do vary between states. Usually a state's Estate Planning law applies if a person's primary residence is here (called their "domicile"). Many judges say "residence" occurs if a person lives in a place and has no clear plans to leave. Later plans to move don't matter till people move. People can stay under a previous state's Estate Planning laws after they move if people always plan to leave a new state. For example, people who move to a new state for years or more for travel, school, work, or military may keep legal ties to their old state. Many people do health care forms for the state a health facility is in. Most immigrants of any kind can do Estate Planning here.

## **PERSON HAS POWER TO CONTROL THESE THINGS BUT IT'S OFTEN NOT VITAL**

Estate Planning to control health care, property, money, children, funeral, and similar things if a person is absent, sick, or dead is usually easy to do since by law a person mostly has full power to control these things. Given this usually judges, doctors, and other people mostly just ask: "Based on what a person wrote what did they likely want done?" Estate Planning is also easy because simple legal documents can mostly do things and simple words can be used (like putting a few names and listing some property). Note, despite what many people think Estate Planning is often not worth spending a lot on since it often does not greatly change the costs, taxes, delays, and later work in these areas. Benefits seem especially low for young people since just 4% of people die by age 50, and only 0.2% of children before age 18 have 2 parents die to need legal help. *See Social Security Standard Tables by Felicitie Bell; Parent Mortality Census SIPP Study Paper #288.* Many people spend more energy and money on getting good life insurance to help the people they love.

## **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 MAIN LEGAL IDEAS AND SHOULD SUIT MOST PEOPLE**

This book covers the main U.S. legal ideas on Estate Planning and major ways Virginia law is different. This book can't cover all legal issues but should suit most people without strange situations or wishes. Strange situations or wishes that may need research or a lawyer include: a) strange gift wishes for property and money, b) wealth over \$5 million, c) big medical concerns like extreme age, d) property or money going to a person with a 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**

Legal forms are good at most things involved in Estate Planning and can make binding legal documents. Instead of legal forms a lawyer can be used for Estate Planning but it can be costly, take months of work, and they can make mistakes. In life people often pick a cheaper option. Importantly, often a hospital, charity, state agency, or state legislature has made a form most people use and call the "standard form", and doctors, judges, and other people may not like to follow anything else. This book does provide mostly standard forms.

## LEGAL DOCUMENTS MAY NEED TO BE WITNESSED OR NOTARIZED

To be legally enforceable certain legal documents need to be “witnessed”, which is someone watching the person doing the form sign and then the witness signs too. Some documents to be enforceable need to be “notarized” which means a person who is a “notary” sees it signed and then uses an ink stamp and signs. Notaries (also called a “notary public”) are at some banks, brokers, insurance agents, courts, law offices, libraries, and mailing-copying centers. Using a phonebook to call to find a notary willing to help is common. The words “subscribe” and “execute” means a person signed a document, and “acknowledgment” means a person said a signature was theirs. If a person signs a document in a foreign language it is usually binding. When filling in a form it may help people to know “respectively” in a form means “in the order just stated”. When filling out a legal form except for signatures the other parts can be filled in by a person not signing the form, and using pencil is even fine for most parts. Once done often people try to keep the original document and hand out copies. People can have everyone sign many copies to have many copies with ink signatures.

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

This book skips some possible but less common or less useful legal 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.
- 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 delays, costs, or work of others (by “avoiding probate”). But this is rarely done as it may require moving most of a person’s things to a Trust causing maybe years of hassle, mostly to avoid later small work for people happy to be 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.
- Though separate forms exist usually organ donation is handled in drivers license or state ID paperwork.

### NO FEDERAL, VIRGINIA, OR OTHER TAX IS USUALLY OWED AT A DEATH

Usually no or little tax is owed as a result of a death, including estate, inheritance, or death taxes.

The Federal Estate And Gift Tax is the only Federal tax that may be owed due to a death, and it only starts when a tax credit is used up that covers \$13.61 million a person in 2024 and later.

Virginia changed its law and no longer has an estate tax or inheritance tax that is owed at a person’s death.

For property or money in another state most states either have no inheritance or estate tax or, alternatively, have a tax credit that covers over \$3,000,000 of things, so owing such taxes is rare.

A person’s family or Executor may have to file normal income tax returns to cover the partial year a decedent lived and earned income in before they died. Life insurance payouts are usually tax free.



# 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.

■ “Probate” is a legal process to do things after someone’s death like transfer property, handle creditors, and authorize a Guardian. Due to changes in the law probate is now often informal, faster, and less costly.

■ 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.

■ A person doing a Will is called “Testator” or “Will maker”. Before about 1995 a woman Testator was called a “Testatrix” and woman Executor called an “Executrix” but this is no longer often said or written.

■ If no valid Will is done a person is “intestate” and then a dead person’s property and money is transferred to a spouse, children, and family as intestate law says. Some people a fine with this. This is covered later.

■ A person who died is called the “decedent” or “deceased”. A person getting a Will gift is called a “recipient”, “beneficiary”, or “heir” if related (they “inherit”). “Survive” or “surviving” is to be alive after someone else died. The term “descendants” or “issue” usually means a person’s children and grandchildren.

■ A person named in a Will to handle things after someone’s death is called an “Executor”, but if a judge has to pick someone they are called an “Administrator”. The new term “Personal Representative” covers both these things and this new term is now commonly used in most Wills in Virginia.

■ Legally property is: 1) “real property” which is land and buildings (“real estate”), 2) “fixtures” which are things tied to real property (like fences, carpets, and wired-in appliances), or 3) “personal property” which is everything else (like household items, clothes, tools, cars, jewelry, art, moneys, accounts, and stocks),

■ A person under 18 is usually called a “minor” and often a parent or guardian helps them do things. A minor or other person not reasonably able to make wise decisions lacks “capacity” and is “incapacitated”.

■ A document giving power to someone is often called a “Power of Attorney” where the “Principal” gives power to someone called the “Agent” or “Attorney-in-Fact” (but they needn’t be a real attorney or a lawyer).

■ State law is the Virginia Code, sometimes called “annotated” which means it has notes. Each law is called a “statute” or “section” shown by a “§” or “s” mark. A form written in law for people to find and use if wanted is called a “statutory form”. An example of one way to cite a state law is: “Va. Code § 64.2-400”.

## ESTATE MEANS PROPERTY OF DECEDENT AND ENTITY HOLDING THINGS

The “estate” or “probate estate” means all property and money of a dead person that at death or soon after didn’t automatically legally go to new owners. Estate is also the name for a temporary entity run by an Executor to do things after a death (it’s like a small corporation, e.g., “Estate of John Alan Smith”).

## 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 do 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 is used in papers, so at a death property goes automatically to other named owners despite what a Will says (this is often how spouses hold a home);
- 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 then property was transferred into it or this is set to occur, so then the Trust papers control where things put in the Trust go after someone’s death.

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

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

It is vital to be aware some money or property of a decedent may automatically transfer on death or soon after to new owners if certain arrangements were made earlier. This is usually called “non-probate property”. Such things transfer as arranged even if a Will names the same items in Will gifts.

Examples are: a) a “designated beneficiary” form was done to name people to get an investment or account, b) transfer-on-death accounts were used, 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, usually property in a Trust will ignore a Will and transfer as paperwork say to. Life insurance usually goes to the 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 some thing is missed. When doing a Will people should consider non-probate transfers that will occur automatically at a death and consider what will be left.

## HELPFUL INFORMATION FORM CAN HELP TELL FAMILY AND FRIENDS THINGS

People can do an unofficial “Helpful Information” form banks, lawyers, and planners suggest so family or friends after a death will 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 A PERSON CONTROL THINGS AFTER THEIR DEATH

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

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

A Will should be kept so it can be found within days of a death, like in a desk, drawer, safe, with a person, or less often a safe deposit box. It may help to tell family how to get a Will. In Virginia a Will may not be filed before a person’s death. A few Circuit Courts in some counties let a person file their Will for safekeeping while they are alive, but this is fairly rare. See Va. Code § 64.2-409.

### A WILL USUALLY MUST BE SIGNED WITH 2 WITNESSES

#### WILL MUST SHOW IT’S A WILL AND USUALLY BE SIGNED WITH 2 WITNESSES

In Virginia a document to be a Will must show it is a Will by its words, and the person doing it usually must sign in front of 2 persons acting as witnesses who then sign too. A Will just spoken on a video or audio recording usually has no legal effect. As this book later covers Virginia law does let witnesses be skipped if a Will is all handwritten. Some people modify a Will to have 3 or 4 witnesses just in case this may help later.

#### WITNESSES SHOULD AT LEAST AGE 18 AND OFTEN NOT GETTING WILL GIFTS

A person to witness a Will must be at least age 18. It is best but not legally required a witness not be very old, live far away, or be named in a Will to be Executor, Guardian, or similar. In Virginia unlike some states a Will is still totally valid if a witness is getting Will gifts. But many people just to avoid the slight appearance of misconduct pick witnesses who are “disinterested”, which means they or their spouse are not named to get things in a Will. Often people used as witnesses are friends, neighbors, strangers, or family.

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

A person doing a Will usually signs it with at least 2 witnesses who also sign while all are in 1 room and see others sign. People showing others an ID is not required but is common. A Testator need not initial the Will pages. A Testator or witness usually use their full legal name unless they dislike and rarely use it. Witnesses only read the 1 paragraph they sign. Some Wills have each witness print their name and address. Legally a Testator needn’t say anything but often they say a thing like, “My name is \_\_\_\_ this is my Will that I do voluntarily and ask you 2 people to witness”. Lawyers call a person saying aloud a document is their Will as “publishing a Will”. Some Testators chat about a Will with witnesses to help show they are of sound mind.

### 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. Or people can 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. Revoking a Will usually doesn’t bring back an earlier Will.

## **OFTEN AT START OF A WILL A PERSON NAMES ANY SPOUSE AND CHILDREN**

Many Wills start with a place for a Testator to name any current living spouse and children of any age. Natural or adopted children should be put here including any born outside marriage. People without this family can skip this or put “none”. Not doing this may invalidate a Will by indicating a person lacks sufficient mental ability, or let a spouse or child not listed ask a judge to give them a share or all of the estate by claiming a Testator just forgot them. After listing family in a Will a Testator is often free to give them nothing.

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

Most Wills say after a death the family and friends may do “informal probate” which can avoid costs and delays. Informal probate often is done with just 1 court hearing and often is completed in well under 1 year.

## **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. A person doing a Will need not understand these paragraphs.

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

### **A WILL NAMES SOMEONE TO BE EXECUTOR TO DO THINGS AFTER A DEATH**

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

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

Virginia law says a person can ask to can be paid for their work as Executor. Unless a Will says pay is a certain specific amount or hourly pay rate most counties use a pay schedule set a roughly 5% of the value of decedent’s estate but usually excluding all real property (real estate). In actual practice an Executor often later skips asking for pay to not owe income tax and to leave more estate resources to carry out Will gifts. Note, expenses an Executor has like for insurance, utilities, repairs, funeral, mortgage, attorneys, and probate costs are paid for with money or property of the estate. Any lawyer an Executor hires usually is paid a fixed sum or hourly rate that the Executor and lawyer agree on.

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

A person to be Executor must be at least age 18 and usually not be a felon or similar, and not be badly disabled. A non-resident of Virginia can be Executor but being a resident can make work easier and may avoid need for a costly court bond. Naming 2 people to both be Executor is allowed but rare due to the risk of legal issues, and since any 1 person named should be trusted. People can name a 2nd person to be Executor if the 1st person isn’t later available but most skip this since this rarely occurs and if needed a judge can just pick someone. To add such a 2nd person a person could add: “or if they are reasonably unable or unwilling to serve I name \_\_\_\_\_ to serve”.

# **CHAPTER 4**

## **WILL GIFTS INCLUDING RESIDUE CLAUSE**

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

Most people use a Will mainly to legally 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 written Will. A Will can control property acquired after it was signed. The end of this Chapter covers “intestate law” which says where a person’s things go at death if no valid Will handles this.

### **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 already gifted in a Will or used other ways, often called a “catch-all” or “left-over” clause. This is covered later in this Chapter.

### **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 some rights which this book later covers.

### **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 Hu”. Money gifts are easy to write, let equal gifts be made, and are legally safer for many reasons. To carry out money gifts an Executor usually uses accounts or sells some property in the estate.

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

Many Wills like this book’s Will forms say a person named in a Will gift must survive (live past) the Testator for the gift to occur unless gift language specifically says different. If survival is not required for a Will gift what happens if a named recipient is dead can be unclear (state laws can be very complex). People doing a Will should consider how Will gifts to people dying before Testator usually have no effect. People if they see a person in a Will gift has died can re-do a Will or just let the Residue Clause handle it.

### **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 attorney’s fees. Due to all this conditions are rarely put on Will gifts.

## 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 Baxter and Mary Ann Swanson” means each person owns part of every item. People later can split things by agreement or an Executor can decide how to divide items. If a person in a joint gift has died their part usually is left to transfer under a Residue Clause.

## PEOPLE CAN ADD AN ALTERNATE BENEFICIARY LIKE FOR SPECIAL ITEMS

A person named in a Will gift dying before a Testator is rare, and if seen people can re-do a Will to name new persons or let a Will’s Residue Clause handle it. Some people to prepare for this chance maybe for special items write an “alternate beneficiary”, like “I give boat to Ed Liu but if they don’t survive me to Ann Liu”.

## CAN SAY IF PERSON IN GIFT DIES THEN IT GOES TO LINEAL DESCENDANTS

A Will gift can say it goes to a person but if they don’t survive then to their “lineal descendants per stirpes”. Descendants are a person’s children and grandchildren. “Per stirpes” means “by branch” and is about how to spread property and money, and it mostly tries to divide things so each family branch gets an equal share. Most Wills use “lineal descendants” language in a Residue Clause. An example shows how it works:

A Will may say: “**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, under the law Ken Wu himself gets 50% and Ben Wu’s 2 children each get 25%.

## 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 John Smith and 10% to Mary Baker”.

## GIFTS IN WILL CAN GO TO A GROUP OR CLASS OF PEOPLE

To save work a Will gift can go to a group or class of people like certain family if who is meant is later easy to determine. People can say roughly how much in total is gifted to be clearer. Examples are: “I give \$10 to each person on my 2018 soccer team” and “I give \$10 to each of my grandkids so this is about \$100 in total.”

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

Many families unofficially let people take items in ways a dead person said, showed by stickers, or wrote on a note, which is often fine. If anyone objects a judge often has the Will and law be followed fully but later people can voluntarily retransfer items. Later this book explains gifts done by Tangible Personal Property Memorandum.

## LATER DIVORCE OR MURDER CANCELS WILL GIFTS

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

## PROBABLY DO NEW DOCUMENTS 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.



## **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. This avoids need to describe things and has less legal risk. After applying a Residue Clause if anything is somehow left then by law a decedent’s closest heirs-at-law get things (this is their 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, the residue:**

- a) to John Paul Doe my husband who survive me with persons just named who survive me taking the share of non-survivors, then if anything remains**
- b) to Sam Doe, Beth Wu, and Greta Fisher 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 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 his (so get 1/6 each) and the other 2 persons in the second part Beth Wu and Greta Fisher get 1/3 each.

### **A FEW PEOPLE REWRITE RESIDUE CLAUSE TO HAVE 1 PART**

A normal Residue Clause of 2 parts is often fine for most people. But a few people modify a Will to have a “1 Part Residue Clause” since it tends to gift to a group more equally and be simpler to understand. People with no spouse and no young children are likelier to do this change, but even they often don’t bother. See Example below for exact words to use if people want to change to a 1 Part Residue Clause.

### **EXAMPLE OF 1 PART RESIDUE CLAUSE:**

**“RESIDUE CLAUSE: The rest, residue, and remainder of my estate, property of any kind and nature, and anything I have an interest in, I give to Adam Doe and Beth Wu who survive me and to lineal descendants per stirpes of any person just named who did not survive me.”**

In this example if Adam hasn’t survived but had 2 children they each get 25%, and if Beth Wu survived she gets 50%. Or if Beth Wu also hadn’t survived and had 5 kids they split her part and each gets 10%.

## CAN LEAVE SOME WILL GIFT LINES BLANK OR WRITE TO SAY SKIP

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.

## MUST SUFFICIENTLY DESCRIBE NAMES AND PROPERTY IN A WILL

### PUTTING NAMES OF PEOPLE OR GROUPS IN A WILL 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 \$10 to The Salvation Army, “I give \$8 to Fairfax Public Library, Virginia”, and “I give \$5 to Wix Church, Rex, TX”. People can phone for 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 Hill”. 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 in attic” likely is OK.

### DESCRIBING REAL PROPERTY IS HARD IF NOT USING RESIDUE OR TITLE

The easier, legally safer way to transfer real property (real estate) at death is: 1) do nothing specific so it's handled by a Will Residue Clause, or 2) have a lawyer or agent put names in a deed or similar document so then named persons legally get things at someone's death. Most use these 2 ways to transfer real property.

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

It is possible to gift real property at a particular address with very plain words, like a house, fixtures, and land can be fully given by something like: “I give 81 Maxwell Street, Richmond, Virginia, to Mary Ann Brown”.

People can do a blanket gift giving all of a kind of property, like, “I give all real property and fixtures in Martin County, Virginia to Ann Ivy Hill ” or “I give all furniture and all bank accounts to Eric Paul Carlson”.

Giving real property in a Will using a “legal description” is how many 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” on a map 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.

## **MOST STATES AND WILLS SAY PEOPLE TO GET GIFTS MUST SURVIVE 5 DAYS**

Helpful laws in most states and all this book's Will forms say if a person dies within 5 days (120 hours) or simultaneously with a Testator, then they are legally seen as dying before Testator. This skips the need to prove exact time of death (like if people die in 1 accident), and avoids a Will gift or right to something going to someone who then soon dies within days (so an item may have to go through multiple probate proceedings).

## **INTESTATE LAW SAYS WHERE THINGS GO AT DEATH IF THERE IS NO WILL**

State "intestate law" says where property and money goes if no valid Will was done before person died (except for certain rights of spouses, family, and creditors). Intestacy laws often say half and sometimes all goes to any surviving spouse (if any), then half or any remainder goes to decedent's children (or if dead their own child gets that share), then next closest family, and then to the state. Many people are happy with intestate law and intentionally die with no Will, but some people do a Will to get the exact distribution they want and many other helpful things. For intestate law a legally adopted child counts but not a foster-child or a step-child. Intestate law is fairly complex but people can read the law which starts at Va. Code § 64.2-200.

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

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

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

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

A parent with young children if married to the other parent often does small gifts to friends and family, then in the Residue Clause gives mostly to a spouse, and then names children as fallbacks in the Residue Clause.

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

# CHAPTER 5

## DEBT, MARRIAGE, AND YOUNG CHILD ISSUES

### THIS CHAPTER COVERS CERTAIN ISSUES THAT SOME PEOPLE CAN SKIP

This Chapter covers debt, marriage, and young child issues, and some people can skip parts of this.

### DEBT ISSUES

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

If a decedent had debts then creditors owed 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. Money to pay debts comes from decedent's money and property so may affect (in order) the Will Residue, Will general gifts, Will specific gifts, and non-probate transfers. Probate, health care, taxes, and funeral costs by law have some priority to be paid first. For certain reasons often not all debts are paid. 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 for decedent's debts unless they actually guaranteed or co-signed.

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

Laws in most states say do not pay off secured debts on property of a decedent like a house mortgage or vehicle lien even if other debts are paid by Executor or in probate. This avoids using up estate resources on paying these usually big debts and leaves more estate resources to carry out Will gifts and other transfers. Due to this, all this book's Will forms say do not usually pay off any secured debts. But if a Testator wants they can 1) put in a Will an order to pay (like, "Executor pay off the house mortgage"), or 2) gift enough money to pay off a secured debt to the person getting the property. Most banks let the new owners after a death keep paying monthly any secured debt like a mortgage or lien.

#### FAMILY RIGHTS MAY BE USED TO GET FAMILY THINGS BEFORE DEBTS

Most states have "Family Rights" a decedent's surviving spouse or children can claim, and this helpfully may let them get things even before most debts of decedent are paid and even before Will gifts.

First, in many U.S. states a surviving spouse or if there is no spouse then decedent's children can use an "Exempt Property" right to get ownership of some of a decedent's household items, vehicles, and other items to use to live. In Virginia the Exempt Property right amount is \$20,000 in 2024. See Va. Code § 64.2-310. Often family can keep even more of decedent's items by saying the decedent in life gave them more things.

Second, in many U.S. states a surviving spouse and young children can use a "Family Allowance" right to get some of a decedent's money and property to live on for 1 year or so. In Virginia a spouse can use this right to usually get \$20,000 (or \$2,000 a month) from a decedent's estate to live on. See Va. Code § 64.2-309.

Third, in many U.S. states if a decedent left a small estate the family can use a "Small Estate Affidavit" to get most of what there is. Virginia does this, and here a surviving spouse can use an affidavit to get all a decedent left if there is under \$50,000 of money and property.



Fourth, in many states a surviving spouse or young children have some right to get (or stay in for years) the house or mobile home owned by a decedent under a "Homestead Law". But Virginia law mostly does not say a spouse or children by law automatically get the homestead property. Instead Virginia law just says a surviving spouse can get a "Homestead Allowance" of \$20,000 from decedent's property and money to help them live, but by law this usually requires giving up what a Will gives the spouse. See Va. Code § 64.2-311. No matter what a spouse or children living in a home may be legally and practically very hard to remove. So family don't try to cause legal trouble about a house usually a person gives a house mostly to a spouse or young children. Some people may want to do other research.

## **MARRIAGE ISSUES**

### **VIRGINIA USES SEPARATE PROPERTY LAW FOR SPOUSES**

Virginia like most states uses the Separate Property Law system that says a married person mostly owns their money and property separately and not jointly with a spouse. Due to this a married person is usually free to sell during life or gift by Will most of their money or property and does not have to involve a spouse. But joint ownership by 2 spouses and not separate ownership can arise in other ways, like by agreement, both spouses paying part of the purchase price, if a gift was to both spouses, or if paperwork calls it joint.

### **COMMUNITY PROPERTY LAW APPLIES IN OTHER STATES FOR SPOUSES**

There are 9 states mostly in the Western U.S. that use the Community Property Law system for spouses (Arizona, California, Louisiana, Idaho, Nevada, New Mexico, Texas, Washington, and Wisconsin). This says property or money is owned 50/50 by spouses as Community Property if it's from mental or physical work while married (like wages or salary) or if items are bought or improved with any other Community Property. Married people very recently moving from these states may face legal issues.

### **JOINT WILL OR SIMILAR BOTH SPOUSES SIGN IS NOT RECOMMENDED**

Some couples who worry a lot try to sign a "Joint Will" or a "Contract To Make A Will" done by a lawyer which says spouses give all to the other if they die first, then says last living spouse gives to all children equally, and usually says a spouse may not change this. This is banned in some states and is rarely used.

### **SPOUSE CAN CLAIM ELECTIVE SHARE INSTEAD OF THEM FOLLOWING WILL**

A spouse if unhappy with what a Will and other transfers may give them has a right to instead choose (elect) an "Elective Share" of a percentage of a dead spouse's property and money rather than take what a Will says. State laws do this for fairness, so a spouse has resources to live on, and so early divorce isn't the only way to be financially secure. To avoid this spouses can sign a pre-nuptial or a post-nuptial agreement by a lawyer but this can be costly to do. In Virginia the Elective Share goes up to 3% at 1 year of marriage and keeps rising till reaching 50% at 15 years. In some cases an Elective Share can cover things a decedent gave away recently or controlled but didn't own. Clearly if a spouse uses an Elective Share to get up to 50% of a decedent's money and property this may take so much it interferes with some other transfers. To avoid a spouse wanting to use the Elective Share most people give over 1/2 of their things to any spouse of theirs.

## YOUNG CHILD ISSUES

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

If a parent dies with a child under age 18 then any other natural or adopted parent (but not a step-parent) almost always automatically gets control of the child's care (including health care, school, and home issues). This won't occur only if the other parent will be unavailable a long time or is proven unfit in court which is rare. But just in case it is later needed (like later both parents of a child die) a Will often names a healthy and willing relative or friend as "Guardian of the Person" to give this care for a young child.

### WILL CAN NAME A GUARDIAN OF THE ESTATE TO MANAGE CHILD'S PROPERTY

Since a child until age 18 can't legally easily control property including money a Will often names a person to be "Guardian of the Estate" to have the job of managing a young child's property and money. Many states call this a "Guardian of Property" or a "Conservator". This person decides each year how to use property and money on a child's needs (like on school, living, and health care) and then usually at age 18 anything left goes to the child. Any person paying things for a child can ask to be paid back. A judge often holds a yearly hearing on spending. As a nice 2nd option to avoid work and costs most Wills say an Executor may name a person including themselves as "Custodian" to manage things under the new Uniform Transfers To Minors Act.

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

Most parents and this book's Will forms name the same 1 person to care for a child and also manage a child's property and money. People can change a Will to name different people for the 2 positions, but this is rarely worth it since parents dying is rare, rarely do children get much, a person smart enough to handle a child often can handle money, and naming different people can lead to arguments and even costly lawsuits between people. Will gifts can go to someone named to be a Guardian.

### PERSON TO HELP A CHILD MUST BE AT LEAST 18

To be a Guardian for a child in Virginia a person must be at least age 18 but they need not reside here. Later usually a judge can't think a person is unfit to serve as Guardian, which usually means they have no history of criminal felonies, abuse, or fraud. The choice made by the last living parent is usually followed. If no Will names a person for a position or they're unavailable a judge can pick someone, but family may argue about who to suggest. Naming 2 people to act at the same time in the same position is rare since 2 persons may argue and any 1 person named should be smart enough to act alone. In rare cases a married couple is named for the same position but there can be problems if they divorce or disagree. Some Wills add a 2nd person to serve if the 1st person named is later not available, like: "or if they are later unable to serve I name \_\_\_\_\_ to serve"). But most people skip naming a fallback person since it is rarely needed, if a problem is seen a Will can be redone by a person, and a judge can just pick someone if needed.

### NAMING PERSONS TO HELP CHILD RARELY MATTERS

A child under 18 having parents die is rare so parents shouldn't worry much about naming people to help. A good U.S. study looked at 72,240 people under age 18 and found only 2014 had lost 1 parent (so 2.78%) and only 97 had lost 2 parents (so 0.13%) had lost 2 parents. *Parent Mortality Census SIPP Paper #288.*

# CHAPTER 6

## BASIC IDEAS ABOUT CONTROLLING HEALTH CARE

### BASIC IDEAS HELP PEOPLE UNDERSTAND CONTROLLING HEALTH CARE

Some ideas help people understand health care forms.

■ By law people control their own health care by telling doctors and others what they want unless they're "incapacitated" by insufficient ability to a) communicate verbally or by notes, b) be rational, or c) be conscious. In actuality most people keep control of their own health care till death or till no big treatment options remain, but people may worry they may be incapacitated a long time so they want to do health care forms.

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

■ In forms a person can be named to have control of health care if needed who is often called "Agent". Forms about control of health care if people are later incapacitated are often called "Advanced Directives".

■ In forms people can give written health care instructions that doctors, family, and Agent must obey.

■ Parents do have power over health care of their children under age 18.

■ Some **young married people** give a spouse power over health care in case they are ever incapacitated. Some **young adults** give this power to parents. **Young people** are less often ill so often skip doing things.

■ Pain relief like pain drugs and comfort care is usually given even if forms say to stop or limit other care.

■ Most people only do a single long health care form that has a spot to give someone power over health care and a spot for instructions (this is often called a "Health Care Power of Attorney" though names vary).

■ For the rare times stopping health care ("pulling the plug") likely matters due to extreme illness or old age:

-- most people do nothing special and trust family or Agent for health care to decide on stopping care based on many factors like pain, cost, hassle, suffering and time of treatment, beliefs, and chances of recovery;

-- a few people do a serious document to say to stop most health care if later doctors decide a person is incapacitated, has an irrevocable terminal condition or likely won't regain good consciousness, and more medical care won't help (this document to stop care is often called a "Living Will" though names vary);

-- a few people do a serious document to starting immediately block certain health care (and this often 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 BUT WITHOUT GUARDIANS

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 child under age 18.

### THIS FORM IS A WILL WITH SEVERAL PARTS

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

**Paragraph 1, “List Of Spouse And Children”**, lets a person write the names of any living spouse and children they have, or if none maybe write “none”. This helps show a Testator has enough mental ability and memory to do a Will. Not listing a living spouse or child here can let an omitted person ask a judge to give them a share or all of a Testator’s property and money by claiming they were accidentally forgotten.

**Paragraph 2, “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.

**Paragraph 3, “Separate Writings”**, says to follow any separate writings done apart from the Will that gifts tangible personal property in manner allowed by state law.

**Paragraph 4, “Residue”**, has a Residue Clause to say any 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.

**Paragraph 5, “Administration”**, names a person to be Personal Representative to do things after a person’s death (in the past the similar term Executor was used in Virginia for the person doing this).

**Paragraph 6, “Miscellaneous”**, has paragraphs of legal language to help avoid certain legal issues.

Last is a paragraph for Testator to put the date and sign, and a paragraph for 2 witnesses to put the date, sign, and print the addresses they live at.

### 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 named here have died before the Will maker then other persons named here in this 1st space take the dead person’s 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 at least 2 persons acting as witnesses at least age 18 who then also sign.

# LAST WILL AND TESTAMENT

I, \_\_\_\_\_, of \_\_\_\_\_, Virginia 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. LIST OF SPOUSE AND CHILDREN.** To help show I am mentally competent and have sufficient memory to make a Will I wish to list any living spouse and living children I now have. I currently have the following living spouse and living children:

\_\_\_\_\_  
\_\_\_\_\_.

**2. 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 \_\_\_\_\_.

**3. 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.

**4. 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 if anything remains

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

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

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

In this Will no part left unfilled is a mistake including spaces in the residue clause.

The facts support and I want Virginia state law to apply to this Will and my estate.

I order that my just debts, funeral and related expenses, and taxes be paid as soon after my death as practical but only those items my Personal Representative chooses to pay.

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

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

I am intentionally not providing by Will or other ways for some family, including I am not providing for some children of mine and also children of a deceased child of mine.

If a gift Will reasonably mentions survival then survival is an absolute condition and anti-lapse laws or similar provisions have no effect and without survival the gift lapses. Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive me the part to them lapses and instead goes to other surviving recipients.

No earlier transfer reduces a Will gift unless I usually called it a loan or advancement.

In this Will any gender or gendered word includes all genders, and the singular includes the plural and vice versa, and “they” can mean a single person or many persons.

Unless a Will specifically says otherwise a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, and a recipient of a Will gift of property takes it subject to debts. Also, no recipient of property who may lose it or who pays to keep it may have my estate or others pay or do exoneration.

If during my life I disposed of an item in a specific gift then the gift is extinguished (including ademption shall apply and it adeems).

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 in the time and manner they choose. Any Personal Representative or other fiduciary shall have all powers and authorities conferred by statute or common law in any jurisdiction they may act. In addition to powers granted by law I grant any Personal Representative the powers in Va. Code § 64.2-105, whether dealing with assets subject to administration in Virginia or elsewhere, which powers are incorporated by reference and made part of this Will. I give any Personal Representative full management and control of all estate assets, without restriction to the incorporated powers.

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

If context permits the terms Personal Representative and Executor and Administrator

are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and Custodian are interchangeable, and residue and residuary are interchangeable. Any such person may stand in the place of and have all powers like the others named here.

The residue includes lapsed or failed gifts, insurance paid to the estate, digital assets, inheritances owed me, and all I had power of appointment or testamentary disposition over.

Any Personal Representative may access, manage, delete, modify, transfer, and otherwise control any digital accounts and assets I had any interest in or power over.

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

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having 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 Virginia Uniform Transfers to Minors Act or similar law anywhere, and may pick a person to be Custodian including themselves.

### **TESTATOR**

IN WITNESS WHEREOF, I declare that this instrument is my Will which I make as Testator and I have voluntarily signed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Testator

### **WITNESSES**

We, the Witnesses who sign below, and who are now at least 18 years of age and are competent to witness this Will, do hereby certify that \_\_\_\_\_, the Testator, has signed, sealed, acknowledged, and declared the foregoing instrument as and for the Will of the Testator in the presence of both of us two Witnesses, and both us Witnesses in Testator's presence at the Testator's request and in the presence of each other and the Testator have hereunto subscribed our names to act as and be attesting witnesses, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Witness #1

\_\_\_\_\_  
Address of Witness #1

\_\_\_\_\_  
Signature of Witness #2

\_\_\_\_\_  
Address of Witness #2

# CHAPTER 8

## FORM 2: WILL (GUARDIAN)

### FORM 2 IS A WILL WITH GUARDIAN PART FOR PEOPLE WITH 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 INCLUDING A GUARDIAN PART

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

**Paragraph 1, “List Of Spouse And Children”**, lets a person write the names of any living spouse and children they have, or if none maybe write “none”. This helps show a Testator has enough mental ability and memory to do a Will. Not listing a living spouse or child here can let an omitted person ask a judge to give them a share or all of a Testator’s property and money by claiming they were accidentally forgotten.

**Paragraph 2, “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.

**Paragraph 3, “Separate Writings”**, says to follow any separate writings done apart from the Will that gifts tangible personal property in manner allowed by state law.

**Paragraph 4, “Residue”**, has a Residue Clause to say any 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.

**Paragraph 5, “Administration”**, names a person to be Personal Representative to do things after a person’s death (in the past the similar term Executor was used in Virginia for the person doing this).

**Paragraph 6, “Guardian”**, names a person as Guardian of the Person to care for minor children under 18 if needed (like if both parents die) and Guardian of the Estate to manage property and money of children.

**Paragraph 7, “Miscellaneous”**, has paragraphs of legal language to help avoid certain legal issues.

Last is a paragraph for Testator to put the date and sign, and a paragraph for 2 witnesses to put the date, sign, and print the addresses they live at.

### 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 named here have died before the Will maker then other persons named here in this 1st space take the dead person’s 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 at least 2 persons acting as witnesses at least age 18 who then also sign.



# LAST WILL AND TESTAMENT

I, \_\_\_\_\_, of \_\_\_\_\_, Virginia 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. LIST OF SPOUSE AND CHILDREN.** To help show I am mentally competent and have sufficient memory to make a Will I wish to list any living spouse and living children I now have. I currently have the following living spouse and living children:

\_\_\_\_\_  
\_\_\_\_\_.

**2. 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 \_\_\_\_\_.

**3. 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.

**4. 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 if anything remains

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

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

**6. GUARDIAN.** I name, nominate, and appoint \_\_\_\_\_  
to be Guardian of the Person of any minor child of mine and also to have care, authority, custody, and other control of them. I also name this same person to be Guardian of the Estate for any minor child and also to have care, control, and power over their property, money, and estate (including if helpful as Conservator).

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

In this Will no part left unfilled is a mistake including spaces in the residue clause.

The facts support and I want Virginia state law to apply to this Will and my estate.

I order that my just debts, funeral and related expenses, and taxes be paid as soon after my death as practical but only those items my Personal Representative chooses to pay.

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

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

I am intentionally not providing by Will or other ways for some family, including I am not providing for some children of mine and also children of a deceased child of mine.

If a gift Will reasonably mentions survival then survival is an absolute condition and anti-lapse laws or similar provisions have no effect and without survival the gift lapses. Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive me the part to them lapses and instead goes to other surviving recipients.

No earlier transfer reduces a Will gift unless I usually called it a loan or advancement.

In this Will any gender or gendered word includes all genders, and the singular includes the plural and vice versa, and “they” can mean a single person or many persons.

Unless a Will specifically says otherwise a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, and a recipient of a Will gift of property takes it subject to debts. Also, no recipient of property who may lose it or who pays to keep it may have my estate or others pay or do exoneration.

If during my life I disposed of an item in a specific gift then the gift is extinguished (including ademption shall apply and it adeems).

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 in the time and manner they choose. Any Personal Representative or other fiduciary shall have all powers and authorities conferred by statute or common law in any jurisdiction they may act. In addition to powers granted by law I grant any Personal Representative the powers in Va. Code § 64.2-105, whether dealing with assets subject to administration in Virginia or elsewhere, which powers are incorporated by reference and made part of this Will. I give any Personal Representative full management and control of all estate assets, without restriction to the incorporated powers.

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

If context permits the terms Personal Representative and Executor and Administrator are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and Custodian are interchangeable, and residue and residuary are interchangeable. Any such person may stand in the place of and have all powers like the others named here.

The residue includes lapsed or failed gifts, insurance paid to the estate, digital assets, inheritances owed me, and all I had power of appointment or testamentary disposition over.

Any Personal Representative may access, manage, delete, modify, transfer, and otherwise control any digital accounts and assets I had any interest in or power over.

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

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having 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 Virginia Uniform Transfers to Minors Act or similar law anywhere, and may pick a person to be Custodian including themselves.

### **TESTATOR**

IN WITNESS WHEREOF, I declare that this instrument is my Will which I make as Testator and I have voluntarily signed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Testator

### **WITNESSES**

We, the Witnesses who sign below, and who are now at least 18 years of age and are competent to witness this Will, do hereby certify that \_\_\_\_\_, the Testator, has signed, sealed, acknowledged, and declared the foregoing instrument as and for the Will of the Testator in the presence of both of us two Witnesses, and both us Witnesses in Testator's presence at the Testator's request and in the presence of each other and the Testator have hereunto subscribed our names to act as and be attesting witnesses, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Witness #1

\_\_\_\_\_  
Address of Witness #1

\_\_\_\_\_  
Signature of Witness #2

\_\_\_\_\_  
Address of Witness #2

## **CHAPTER 9**

### **FORM 3: SELF-PROVING AFFIDAVIT**

#### **FORM CAN BE DONE TO MAKE USING A WILL LATER EASIER**

This form is optional but can be done after a Will is done to help with legal work after a person's death of showing a Will was signed right. The form is a statutory form found in Virginia law for people to use.

#### **FORM SAVES LATER WORK OF SHOWING WILL WAS PROPERLY SIGNED**

A Self-Proving Affidavit helps "prove" a Will was signed properly. If this form is not done then after death a little work is need to get evidence from either witnesses to the Will signing, persons familiar with the signatures of people, or a handwriting expert. If this form is not done there is a bit more legal risk a Will isn't followed later. But of people doing Wills about half skip the Self-Proving Affidavit mostly due to hassle of finding a notary on top of 2 witnesses each time a Will is done or re-done, and since it mostly just saves a little later work of people who are happy to do work to get what the Will gives them.

#### **FORM IS DONE BY TESTATOR AND 2 WITNESSES SIGNING BEFORE NOTARY**

This form must be signed in front of a person who is a notary (also called a "notary public") by the Testator and 2 witnesses and then the notary notarizes the form. A notary can be found and asked to help at a bank, insurance agent, government office, mail-copying center, and other places. Using a phone book to call a notary and ask if they will help is common. A notary is likelier to help if a person is an existing customer or pays. This form is often done a few minutes after a Will is signed but it can be done much later (even years later) when everyone can meet with a notary. This form can't legally be done before a Will is done. This form when done is often kept paper-clipped to the Will it supports.

# **SELF-PROVING AFFIDAVIT**

STATE OF VIRGINIA

COUNTY/CITY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared

\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, known to me to be the Testator and the Witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, \_\_\_\_\_ the Testator, declared to me and to the Witnesses in my presence that said instrument is the Will of the Testator and that the Testator had willingly signed, and executed it in the presence of said Witnesses as the Testator's free and voluntary act for the purposes therein expressed; that said Witnesses stated before me that the foregoing Will was executed and acknowledged by the Testator as the Will of Testator in the presence of said Witnesses who, in the Testator's presence and at the Testator's request, and in the presence of each other, did subscribe their names thereto acting as attesting witnesses on the day of the date of said Will, and that the Testator, at the time of the execution of said Will, was over the age of 18 years and of sound and disposing mind and memory.

\_\_\_\_\_  
Signature of Testator

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

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

## **Notary**

Subscribed, sworn and acknowledged before me by \_\_\_\_\_, the Testator, and subscribed and sworn before me by \_\_\_\_\_ and \_\_\_\_\_, Witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED \_\_\_\_\_

\_\_\_\_\_  
(OFFICIAL CAPACITY OF OFFICER)

# CHAPTER 10

## FORM 4: TANGIBLE PERSONAL PROPERTY MEMORANDUM

### FORM LETS SOME GIFTS TO OCCUR AT DEATH BE ADDED OUTSIDE A WILL

This form lets people write to add some more gifts they want to occur after death. This form is often called by people a memo, gift list, or statement.

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

This form lets a person easily write some more gifts of property to occur at their death without having to re-write a Will. To use this form a valid Will must say that it can be used, and all this book's Will forms say this. If this form and a Will gift the same item then by law the Will controls. If more than 1 of these forms gift the same item then the more recent page controls. People can modify an existing form page if they put a new date and signature on it. To avoid later delay this book's form says to ignore any of these forms not found within 90 days after a death. Note, if a person is married often they find it best to assume their spouse will survive them and don't write down items the surviving spouse wouldn't want to have immediately go to someone else, and later if the spouse dies first the person can easily re-do these forms.

### FORM CAN ONLY GIFT TANGIBLE PERSONAL PROPERTY

Under Virginia law this form can only gift "tangible personal property". This means property that is tangible (touchable), so not accounts or moneys or investments related to papers, banks, or some entity like a corporation or partnership or trust. This also means property that is personal property, so not real property (land or buildings) and not fixtures (anything tied to land or buildings). The form can't gift money whether coin or paper currency, even if antique or foreign money. Most lawyers recommend people not use the form to give items used in a trade or business. This form is often used to gift clothes, furniture, vehicles (like cars and trucks and boats), antiques, electronics, appliances, tools, building supplies, art, and jewelry. Improper property written in the form is later just ignored.

It may help understanding to show the Virginia law allowing this form, which in its main part says:

**§ 64.2-400. Separate writing identifying recipients of tangible personal property; liability for distribution; action to recover property.**

A. If a will refers to a written statement or list to dispose of items of tangible personal property not otherwise specifically bequeathed, the statement or list shall be given effect to the extent that it describes items of tangible personal property and their intended recipients with reasonable certainty and is signed by the testator although it does not satisfy the requirements for a will[...]

B. The written statement or list may be (i) referred to as one that is in existence at the time of the testator's death, (ii) prepared before or after the execution of the will, (iii) altered by the testator at any time, and (iv) a writing that has no significance apart from its effect on the dispositions made by the will[.]

### TO COMPLETE THE FORM A PERSON SIGNS AND DATES IT

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

## **TANGIBLE PERSONAL PROPERTY MEMORANDUM**

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 many pages of these writings which should all be seen as one document. If there are conflicts among such writings the provisions of the more recent writing will revoke the inconsistent provisions of a prior writing.

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 _____
_____	to _____

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

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

# CHAPTER 11

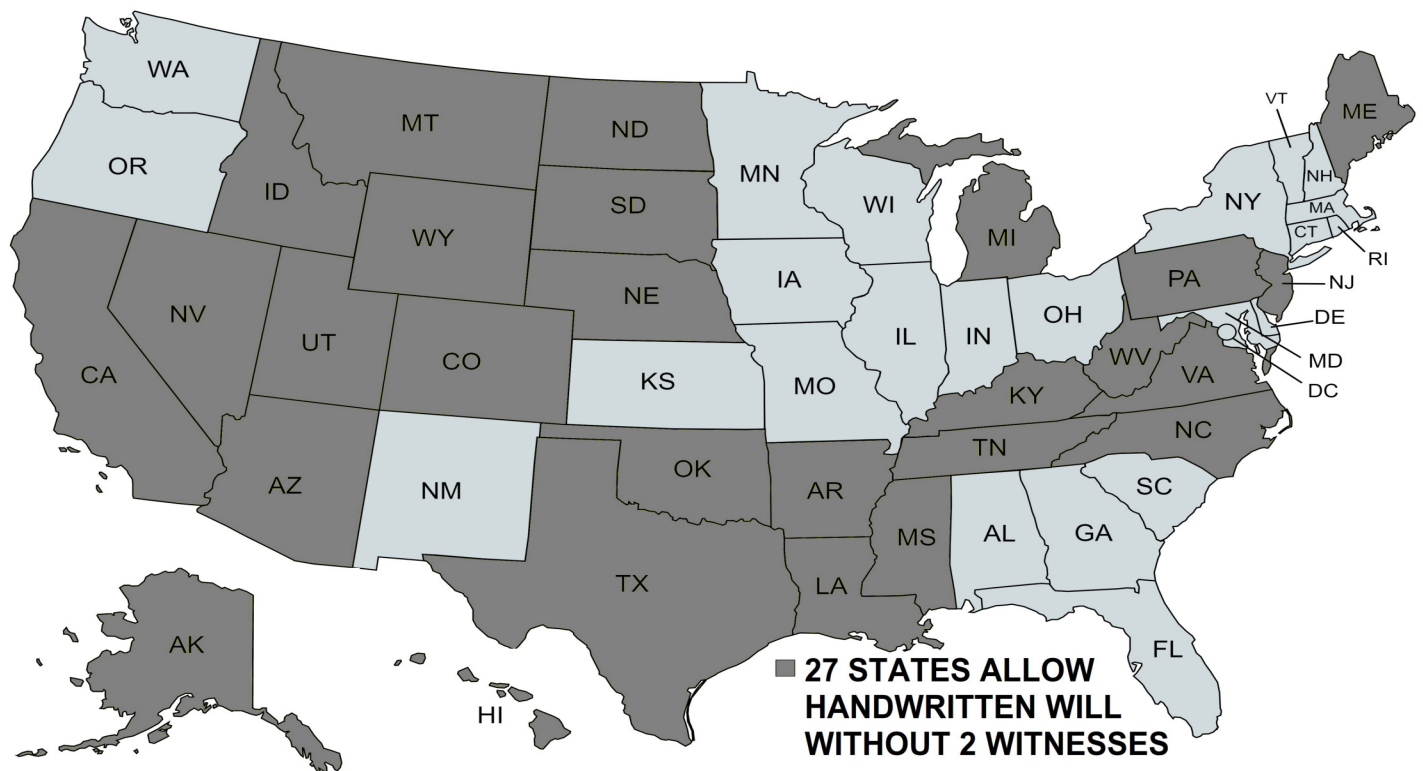
## FORM 5: HANDWRITTEN WILL

### WILL CAN SKIP USING THE NORMAL 2 WITNESSES IF IT'S HANDWRITTEN

A Handwritten Will is a Will that is easier to do since it does not need the usual required 2 witnesses if it is all handwritten by the person doing the Will.

### HANDWRITTEN WILL WITHOUT WITNESSES IS ALLOWED IN VIRGINIA

In 27 states including Virginia a person doing a Will can skip using the usual 2 witnesses to do a Will if: 1) it is all handwritten by the person doing the 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 but most lawyers call it a Holographic Will (Holo means Whole and Graph means Image in the Greek language). Politicians allow this since handwriting is harder to fake, people may be in an emergency or rush, witnesses may be scarce in the countryside, it is private, it can be cheap by skipping complexity and people, and it is traditional to do this especially in rural places. The 27 states that allow Handwritten Wills have about 55% of the U.S. population. 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 later after a death usually 2 people must in writing or testimony say the handwriting looks like the Testator's, which can be a hassle. But a normal Will if no Self-Proving Affidavit was done also needs similar proof like from a witness to the signing or other proof of signing. Handwritten Wills tend to be done by people who are young so unlikely to need a Will soon, who are in a hurry, who want to fix a mistake, who before a trip want to pick a Guardian, who moved to a new state, or who plan to do a better Will later.



## WORDS BELOW ON 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 to Ann Baker who shall be Executor. - Dan Baker"*

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

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

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

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

This Will must be all handwritten by the person doing it on some paper (pencil is allowed) and then signed and dated by the person (usually in pen or permanent marker).

### W I L L

1. *I am John Max Hill and I now live in Fairfax County, Virginia.*

*I revoke any prior Wills and Codicils and declare this to be my Will.*

2. *I give my estate and all else to Jane Eve Hill and Wendy Sue Baker.*

*My not giving to some other family of mine is intentional.*

3. *I name Jane Eve Hill as Personal Representative for me, my Will, and my estate. I request informal probate.*

4. *No bond or similar is needed for any Personal Representative or for any Guardian of any type.*

5. *If ever needed for a minor child I name Mary Ann Dodd as Guardian of the Person to have care, custody, and control of them.*

*I name this same person as Guardian of the Estate to have control and power over any minor child's property, money, and estate.*

*May 8, 2024*

*John Max Hill*

# CHAPTER 12

## FORM 6: ADVANCE DIRECTIVE FOR HEALTH CARE

### FORM CAN NAME AGENT, GIVE INSTRUCTIONS, AND DO ORGAN DONATION

This form lets a person name someone to if needed control health care, give health care instructions of many kinds, and do organ donation. To skip doing any of these things a part can be crossed out or left blank. Note, usually paramedics and other people in a hurry won't read and follow this long form and will just give full care. This book's form is written by a hospital association and is fairly popular. There are other similar forms which are longer and harder to fill out. Most people do this 1 form and skip other health care forms.

### IN FORM PERSON CAN NAME AGENT FOR HEALTH CARE

This form lets a person name someone as "Agent" to control their health care if needed (like if a person is later incapacitated). Naming a spouse, family member, or friend here may avoid need to see a judge for power in an emergency. The part naming someone is often called the "Health Care Power Of Attorney" part.

### FORM CAN GIVE INSTRUCTIONS ON SIMPLE ISSUES AND END OF LIFE ISSUES

In the form a person can write general health care instructions on simple issues that family, Agent, and doctors must legally follow. But many people skip written instructions since they are hard to write to cover all situations, they can cause legal delay and problems if not totally clear, and people trust the wisdom of their Agent or family. The form also asks about "end of life" issues which is about saying how later doctors should stop care if they think a person is incapacitated, in bad health, and more health care likely will not help. This part is often called the "Living Will" part. In this part people are asked to pick an option if doctors say "death is imminent", and also pick an option if a person gets so sick they're "unaware of surroundings" or are "unable to interact" with other people. In practice most people skip end of life issues since they rarely occur, deciding these issues can be stressful, and people trust their Agent or family to decide these things.

### FORM HAS AREA ABOUT ORGAN DONATION

In the form is an area about Organ Donation. But many people who want organ donation do it as part of drivers license or state ID and just skip this section of the form.

### PERSON SIGNS FORM WITH 2 WITNESSES

To complete the form a person signs in the presence of 2 witnesses who then sign. Anyone at least age 18 can be a witness like spouse, family, or friends, but some doctors want non-family and non-medical people to be used. Once the form is done many people show it to places that may give care to make it part of the person's medical file to follow. To cancel the form a person usually says the form is cancelled to places that saw the form.

# VIRGINIA ADVANCE DIRECTIVE FOR HEALTH CARE

I, \_\_\_\_\_, willingly and voluntarily make known  
Printed Name of Individual Making This Advance Directive for Health Care (Declarant)  
my wishes in the event that I am incapable of making an informed decision about my health care, as follows:

*(YOU MAY INCLUDE ANY OR ALL OF THE PROVISIONS IN SECTIONS I, II AND III BELOW.)*

---

## SECTION I: APPOINTMENT AND POWERS OF MY AGENT

*(CROSS THROUGH THIS SECTION I IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.)*

### A. Appointment of My Agent

I hereby appoint \_\_\_\_\_  
Name of Primary Agent E-mail Address

Home Address Telephone Number

as my agent to make health care decisions on my behalf as authorized in this document.

If the primary agent named above is not reasonably available or is unable or unwilling to act as my agent, then I appoint as successor agent to serve in that capacity:

\_\_\_\_\_  
Name of Successor Agent E-mail Address

Home Address Telephone Number

I grant to my agent full authority to make health care decisions on my behalf as described below. My agent shall have this authority whenever and for as long as I have been determined to be incapable of making an informed decision.

In making health care decisions on my behalf, I want my agent to follow my desires and preferences as stated in this document or as otherwise known to him or her. If my agent cannot determine what health care choice I would have made on my own behalf, then I want my agent to make a choice for me based upon what he or she believes to be in my best interests.

### B. Powers of My Agent

*[IF YOU APPOINTED AN AGENT ABOVE, YOU MAY GIVE HIM/HER THE POWERS SUGGESTED BELOW. YOU MAY CROSS THROUGH ANY POWERS LISTED BELOW THAT YOU DO NOT WANT TO GIVE YOUR AGENT AND ADD ANY ADDITIONAL POWERS YOU DO WANT TO GIVE YOUR AGENT.]*

The powers of my agent shall include the following:

1. To consent to or refuse or withdraw consent to any type of health care, including, but not limited to, artificial respiration (breathing machine), artificially administered nutrition (tube feeding) and hydration (IV fluids), and cardiopulmonary resuscitation (CPR). This authorization specifically includes the power to consent to dosages of pain-relieving medication in excess of recommended dosages in an amount sufficient to relieve pain. This applies even if this medication carries the risk of addiction or of inadvertently hastening my death.
2. To request, receive and review any oral or written information regarding my physical or mental health, including but not limited to medical and hospital records, and to consent to the disclosure of this information as necessary to carry out my directions as stated in this advance directive.
3. To employ and discharge my health care providers.
4. To authorize my admission, transfer, or discharge to or from a hospital, hospice, nursing home, assisted living facility or other medical care facility.
5. To authorize my admission to a health care facility for treatment of mental illness as permitted by law. (If I have other instructions for my agent regarding treatment for mental illness, they are stated in a supplemental document.)
6. To continue to serve as my agent if I object to the agent's authority after I have been determined to be incapable of making an informed decision.
7. To authorize my participation in any health care study approved by an institutional review board or research review committee according to applicable federal or state law if the study offers the prospect of direct therapeutic benefit to me.
8. To authorize my participation in any health care study approved by an institutional review board or research review committee according to applicable federal or state law that aims to increase scientific understanding of any condition that I may have or otherwise to promote human well-being, even though it offers no prospect of direct benefit to me.

9. To make decisions regarding visitation during any time that I am admitted to any health care facility, consistent with the following directions:
- 
10. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

ADDITIONAL POWERS OR LIMITATIONS, IF ANY:

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## SECTION II: MY HEALTH CARE INSTRUCTIONS

*[YOU MAY USE ANY OR ALL OF PARTS 1, 2 OR 3 IN THIS SECTION TO DIRECT YOUR HEALTH CARE EVEN IF YOU DO NOT HAVE AN AGENT. IF YOU CHOOSE NOT TO PROVIDE WRITTEN INSTRUCTIONS, DECISIONS WILL BE BASED ON YOUR VALUES AND WISHES, IF KNOWN, AND OTHERWISE ON YOUR BEST INTERESTS. IF YOU ARE AN EYE, ORGAN OR TISSUE DONOR, YOUR INSTRUCTIONS WILL BE APPLIED SO AS TO ENSURE THE MEDICAL SUITABILITY OF YOUR ORGANS, EYES AND TISSUE FOR DONATION.]*

1. I provide the following instructions in the event my attending physician determines that my death is imminent (very close) and medical treatment will not help me recover:

*[CHECK ONLY 1 BOX IN THIS PART 1.]*

☐ I do not want any treatments to prolong my life. This includes tube feeding, IV fluids, cardiopulmonary resuscitation (CPR), ventilator/respirator (breathing machine), kidney dialysis or antibiotics. I understand that I still will receive treatment to relieve pain and make me comfortable. (OR)

☐ I want all treatments to prolong my life as long as possible within the limits of generally accepted health care standards. I understand that I will receive treatment to relieve pain and make me comfortable. (OR)

☐ *[YOU MAY WRITE HERE YOUR OWN INSTRUCTIONS ABOUT YOUR CARE WHEN YOU ARE DYING, INCLUDING SPECIFIC INSTRUCTIONS ABOUT TREATMENTS THAT YOU DO WANT, IF MEDICALLY APPROPRIATE, OR DON'T WANT. IT IS IMPORTANT THAT YOUR INSTRUCTIONS HERE DO NOT CONFLICT WITH OTHER INSTRUCTIONS YOU HAVE GIVEN IN THIS ADVANCE DIRECTIVE.]*

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2. I provide the following instructions if my condition makes me unaware of myself or my surroundings or unable to interact with others, and it is reasonably certain that I will never recover this awareness or ability even with medical treatment:

*[CHECK ONLY 1 BOX IN THIS PART 2.]*

☐ I do not want any treatments to prolong my life. This includes tube feeding, IV fluids, cardiopulmonary resuscitation (CPR), ventilator/respirator (breathing machine), kidney dialysis or antibiotics. I understand that I still will receive treatment to relieve pain and make me comfortable. (OR)

☐ I want all treatments to prolong my life as long as possible within the limits of generally accepted health care standards. I understand that I will receive treatment to relieve pain and make me comfortable. (OR)

☐ I want to try treatments for a period of time in the hope of some improvement of my condition. I suggest \_\_\_\_\_ as the period of time after which such treatment should be stopped if my condition has not improved. The exact time period is at the discretion of my agent or surrogate in consultation with my physician. I understand that I still will receive treatment to relieve pain and make me comfortable. (OR)

☐ *[YOU MAY WRITE HERE YOUR INSTRUCTIONS ABOUT YOUR CARE WHEN YOU ARE UNABLE TO INTERACT WITH OTHERS AND ARE NOT EXPECTED TO RECOVER THIS ABILITY. THIS INCLUDES SPECIFIC INSTRUCTIONS ABOUT TREATMENTS YOU DO WANT, IF MEDICALLY APPROPRIATE, OR DON'T WANT. IT IS IMPORTANT THAT YOUR INSTRUCTIONS HERE DO NOT CONFLICT WITH OTHER INSTRUCTIONS YOU HAVE GIVEN IN THIS ADVANCE DIRECTIVE.]*

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3. I provide the following other instructions concerning my health care:

[YOU MAY WRITE HERE STATEMENTS AND INSTRUCTIONS ABOUT TREATMENTS THAT YOU DO WANT, IF MEDICALLY APPROPRIATE, OR ABOUT TREATMENTS YOU DO NOT WANT UNDER SPECIFIC CIRCUMSTANCES OR ANY CIRCUMSTANCES. IT IS IMPORTANT YOUR INSTRUCTIONS HERE DO NOT CONFLICT WITH OTHER INSTRUCTIONS YOU HAVE GIVEN IN THIS ADVANCE DIRECTIVE.]

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### SECTION III: ANATOMICAL GIFTS

[YOU MAY USE THIS DOCUMENT TO RECORD YOUR DECISION TO DONATE YOUR ORGANS, EYES AND TISSUES OR YOUR WHOLE BODY AFTER YOUR DEATH. IF YOU DO NOT MAKE THIS DECISION HERE OR IN ANY OTHER DOCUMENT, YOUR AGENT CAN MAKE THE DECISION FOR YOU UNLESS YOU SPECIFICALLY PROHIBIT HIM/HER FROM DOING SO, WHICH YOU MAY DO IN THIS OR SOME OTHER DOCUMENT. CHECK ONE OF THE BOXES BELOW IF YOU WISH TO USE THIS SECTION TO MAKE YOUR DONATION DECISION.]

- ☐ I donate my organs, eyes and tissues for use in transplantation, therapy, research and education. I direct that all necessary measures be taken to ensure the medical suitability of my organs, eyes or tissues for donation. I understand that I may register my directions at the Department of Motor Vehicles or directly on the donor registry, [www.DonateLifeVirginia.org](http://www.DonateLifeVirginia.org), and that I may use the donor registry to amend or revoke my directions; **OR**
- ☐ I donate my whole body for research and education.

[Write here any specific instructions you wish to give about anatomical gifts.]

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**AFFIRMATION AND RIGHT TO REVOKE:** By signing below, I indicate that I understand this document and that I am willingly and voluntarily executing it. I also understand that I may revoke all or any part of it at any time as provided by law.

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Date	Signature of Declarant
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The declarant signed the foregoing advance directive in my presence. [TWO ADULT WITNESSES NEEDED]

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Witness Signature	Witness Printed
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Witness Signature	Witness Printed
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*This form satisfies the requirements of Virginia's Health Care Decisions Act. If you have legal questions about this form or would like to develop a different form to meet your particular needs, you should talk with an attorney. It is your responsibility to provide a copy of your advance directive to your treating physician. You also should provide copies to your agent, close relatives and/or friends. For information on storing this advance directive in the free Virginia Advance Health Directive Registry, go to <http://www.VirginiaRegistry.org>. This form is provided by the Virginia Hospital & Healthcare Association as a service to its members and the public. (June 2012, [www.vhha.com](http://www.vhha.com)) ▲\*\**

# CHAPTER 13

## FORM 7: PHYSICIAN ORDERS FOR SCOPE OF TREATMENT

### FORM CAN SAY TO IMMEDIATELY NO LONGER TRY CERTAIN HEALTH CARE

The Physician Orders For Scope Of Treatment form, the “P.O.S.T.” form, says to immediately no longer try certain medical care listed in the form. This is a serious action and usually only done by the very sickest or oldest people. The form is short and can be read fast (like by paramedics) and can be used outside a hospital or similar facility, but it mostly used inside a hospital or similar facility. This book’s form is a standard form issued by the state. Most other states have a similar form with similar names.

### IN FORM CAN PICK WHICH CARE TO IMMEDIATELY NO LONGER TRY

In the form a person can say what health care to immediately no longer try. For example, some people say to not try C.P.R. which is cardio-pulmonary resuscitation (which includes electric defibrillation) to attempt to restart or help breathing or the heart. Some people also say to not give food or water by artificial means or give antibiotics. Doctors can explain how to use the form which sometimes comes on bright color paper. Instead of this form some people in Virginia use the older Durable Do Not Resuscitate Order which is similar but only covers saying to not try resuscitation (C.P.R. and similar). Many people mistakenly just call the P.O.S.T. form the Do-Not-Resuscitate form.

### PERSON AND THEIR PHYSICIAN MUST SIGN FORM

The form must be signed by the person doing the form or someone for them, and their doctor (called in the form a “physician”) or a similar professional. Once completed the form usually is shown to all places that may give health care so it can be put in a person’s medical file and followed. Some people also keep copies handy for themselves or family to show to paramedics and others who want to try to give care. The form may be kept on a 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 that saw the form that it is canceled.

# Virginia Physician Orders for Scope of Treatment (POST)

This is a Physician Order Sheet based on the patient's current medical condition and wishes. Any section not completed creates no presumption about the patient's preferences for treatment.

Name Last / First / M.I.

Address

City / State / Zip

Date of Birth (mm/dd/yyyy)

Last 4 Digits of SSN

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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**A**

✓one only

**CARDIOPULMONARY RESUSCITATION (CPR):** Person has no pulse and is not breathing.

☐ Attempt Resuscitation ☐ Do Not Attempt Resuscitation (DDNR/DNR/No CPR)

*If "Do Not Attempt Resuscitation" is checked, this is a DDNR order. See Page 2 for instructions for use.*

If a previous Durable Do Not Resuscitate form or POST form indicating Do Not Attempt Resuscitation was signed by the patient, only the patient can consent to reversing such a Durable DNR Order.

**When not in cardiopulmonary arrest, follow orders in B & C**

**B**

✓one only

*If "Attempt Resuscitation" is checked in Section A, Virginia EMS protocol includes intubation when needed.*

**MEDICAL INTERVENTIONS: Patient has pulse and / or is breathing.**

☐ **Comfort Measures:** Treat with dignity and respect. Keep warm and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Transfer to hospital only if comfort needs cannot be met in current location. Also see "Other Orders" if indicated below.

☐ **Limited Additional Interventions:** Includes comfort measures described above. Do not use intubation or mechanical ventilation. May consider less invasive airway support (e.g., CPAP or BiPAP). Use additional medical treatment, antibiotics, and cardiac monitoring as indicated. Hospital transfer if indicated. Avoid intensive care unit if possible. Also see "Other Orders" if indicated below.

☐ **Full Interventions:** In addition to Comfort Measures above, use intubation, mechanical ventilation, cardioversion as indicated. Transfer to hospital if indicated. Include intensive care unit. Also see "Other Orders" if indicated below.

**Other Orders:** \_\_\_\_\_

**C**

✓one only

**ARTIFICIALLY ADMINISTERED NUTRITION: Always offer food and fluids by mouth if feasible.**

☐ **NO** feeding tube (Not consistent with patient's goals given current medical condition)

☐ Feeding tube for a defined trial period (specific goal to be determined in consultation with treating physician)

☐ Feeding tube long-term if indicated

**Other Orders:** \_\_\_\_\_

**D**

*Must be signed by a physician, nurse practitioner or physician assistant*

**PROVIDER SIGNATURE:** My signature below indicates that I have discussed the decisions documented herein with the patient or the person legally authorized to consent on the patient's behalf and have considered the patient's goals for treatment to the best of my knowledge.

**DISCUSSED WITH (Required):**

☐ Patient ☐ Agent named on Advance Directive ☐ Other person legally authorized ☐ Court appointed guardian

**SIGNATURE (REQUIRED):** \_\_\_\_\_ **DATE (REQUIRED):** \_\_\_\_\_

**PROVIDER NAME (REQUIRED):** \_\_\_\_\_ **PHONE:** \_\_\_\_\_

**Signature of Patient or Authorized Person (Required)**

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

*If the patient signs and Do Not Attempt Resuscitation is checked in Section A, only the patient can revoke consent for the Do Not Resuscitate Order.*

**Print Name:** \_\_\_\_\_

**If patient lacks capacity, describe authority to consent on the patient's behalf:** \_\_\_\_\_

**If the patient has no Advance Directive, the following persons may consent for the patient in this order: Guardian, Spouse, Adult Children, Parents, Adult Siblings, Other Relative in descending order of blood relationship (Code of Virginia §54.1-2986)**

**FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED**



**NAME:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**CARE SETTING WHERE POST WAS COMPLETED**

☐ Long-Term Care    ☐ Hospital    ☐ Home    ☐ Hospice Facility    ☐ Outpatient Practice    ☐ Other \_\_\_\_\_

Name of Care Setting: \_\_\_\_\_

Name of Healthcare Professional Preparing Form: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_ Organization: \_\_\_\_\_

This form is meant to reflect decisions for treatment based on the patient's current medical condition. It should be reviewed periodically and updated as needed with changes in condition, patient preferences, or setting.

**Instructions for Use of This Form**

**Completing POST**

- POST is not valid until signed by a physician, nurse practitioner or physician assistant who has a bona fide relationship with the patient. Nurse practitioners and physician assistants are authorized to sign POST forms under the Code of Virginia §54.1-2957.02 and §54.1-2952.2 respectively. Health care organizations may have policies that impose limitations on this authority based on the provider's individual scope of practice.
- Use of the original form is encouraged. A photocopy, fax or electronic version should be honored as if it were an original.

**Using POST**

- Patients may choose Full Interventions to authorize ventilation/intubation as a treatment for respiratory distress and still choose Do Not Attempt Resuscitation in the event of a full cardio-pulmonary arrest.
- When comfort cannot be achieved in the current setting, the patient, including someone who has chosen "Comfort Measures," should be transferred to a setting able to provide comfort (e.g. treatment of a hip fracture).
- Review POST periodically and update if needed with changes in condition, patient preferences or setting.

**Revoking/Making Changes to Section A**

- Administrative Code of Virginia §12VAC5-66-10 states "Durable DNR order shall also include a Physician Orders for Scope of Treatment (POST) form." Therefore, provisions under Code of Virginia §54.1-2987.1 apply to POST Section A.
- If "Do Not Attempt Resuscitation" is checked in Section A, and Section D is completed, and the patient has signed this form, no one has the authority to revoke consent for the DDNR order other than the patient as stated in the Code of Virginia §54.1-2987.1.
- If "Attempt Resuscitation" is checked in Section A, a legally authorized decision maker may make changes to carry out the patient's preferences in light of the patient's changing condition.

**Making Changes to Sections B and C**

- To change any orders in these sections, the current POST form must be voided and a new POST form completed.
- If the POST is revoked and no new POST form is completed, full treatment and resuscitation may be initiated.
- If a patient tells a healthcare professional that they wish to revoke their consent to POST or change POST, the healthcare professional caring for the patient should draw a line through the front of the form and write "VOID" on the original, date and sign, and notify the patient's physician. A new POST form then may be completed if desired by the patient.
- If not in a healthcare facility, the patient (or person authorized to make decisions on the patient's behalf, in keeping with the patient's goals for treatment) may revoke consent for POST orders by voiding the form as described above and informing a healthcare professional. The healthcare professional must then notify the patient's physician so that appropriate orders may be written and a new POST form created if desired by the patient.
- If the patient signs this form and becomes unable to make healthcare decisions, a legally authorized decision maker may continue carrying out the patient's preferences in light of the patient's changing condition, and in consultation with the treating physician, may sign, revoke consent to, or request changes to the POST orders (except in Section A as noted above).

**FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED**

*POST forms are available to medical providers and organizations that have agreed to the standards set forth by the Virginia POST Collaborative. Contact: [program.coordinator@virginiapost.org](mailto:program.coordinator@virginiapost.org)*



# CHAPTER 14

## FORM 8: DURABLE DO NOT RESUSCITATE ORDER

### FORM CAN SAY TO IMMEDIATELY NO LONGER TRY HEALTH CARE

This form says to immediately no longer try any kind of resuscitation. This is a serious action and often is only done by very sick or old people. The form is short and can be read fast (like by paramedics) and is mostly used outside a hospital or similar facility, but it can be used inside places too. The book's form is a standard form issued by the state. Most states have a similar form. The form is called "Durable" since it is effective if a person is incapacitated. This form is sometimes called the "D.N.R." form.

### IN FORM CAN SAY TO NO LONGER TRY RESUSCITATION

In the form a person can say to immediately no longer try any resuscitation. This covers most attempts to help the heart or breathing including C.P.R. (cardio-pulmonary resuscitation which is pressing the chest or blowing air into lungs), electric defibrillation, or machine breathing. Recently instead of this form more people are using the P.O.S.T. form which covers more than just resuscitation (see previous Chapter). Even after doing form person is usually free to override it, like by not showing form to paramedics or saying to them "I feel different and want C.P.R. and all care". At the bottom of the form is the actual language that says to withhold C.P.R. but still give comfort care, and the form says (underlining added):

"I hereby direct any and all qualified health care personnel, commencing on the effective date noted above, to withhold cardiopulmonary resuscitation (cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, defibrillation, and related procedures) from the patient in the event of the patient's cardiac or respiratory arrest.

I further direct such personnel to provide the patient other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or alleviate pain."

### FORM IS SIGNED BY PERSON AND DOCTOR OR SIMILAR PROFESSIONAL

The form is signed by a person or someone with authority for them, and also a doctor or similar medical professional. Often several identical pages are signed at once to have "multiple originals" to hand out. Once completed most people show the form to places that may give care to add the form to a person's medical file to follow. People can keep the form handy to show paramedics or other people if needed. A copy of the form is often kept by a person on a refrigerator, bedside table, or small envelope in a pocket. In Virginia a bracelet or necklace can be worn which is equal to showing the form, and 2 places make these: Diabetic Drug Store in Appomattox, Virginia, and also StickyJ Medical ID in Seminole, Florida.



## Durable Do Not Resuscitate Order

Virginia Department of Health

Patient's Full Legal Name \_\_\_\_\_ Date \_\_\_\_\_

### Physician's Order

I, the undersigned, state that I have a bona fide physician/patient relationship with the patient named above. I have certified in the patient's medical record that he/she or a person authorized to consent on the patient's behalf has directed that life-prolonging procedures be withheld or withdrawn in the event of cardiac or respiratory arrest.

I further certify (must check 1 or 2):

- ☐ 1. The patient is CAPABLE of making an informed decision about providing, withholding, or withdrawing a specific medical treatment or course of medical treatment. (Signature of patient is required)
- ☐ 2. The patient is INCAPABLE of making an informed decision about providing, withholding, or withdrawing a specific medical treatment or course of medical treatment because he/she is unable to understand the nature, extent or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision.

If you checked 2 above, check A, B, or C below:

- ☐ A. While capable of making an informed decision, the patient has executed a written advanced directive which directs that life-prolonging procedures be withheld or withdrawn.
- ☐ B. While capable of making an informed decision, the patient has executed a written advanced directive which appoints a "Person Authorized to Consent on the Patient's Behalf" with authority to direct that life-prolonging procedures be withheld or withdrawn. (Signature of "Person Authorized to Consent on the Patient's Behalf is required.)
- ☐ C. The patient has not executed a written advanced directive (living will or durable power of attorney for healthcare). (Signature of "Person Authorized to Consent on the Patient's Behalf is required)

I hereby direct any and all qualified health care personnel, commencing on the effective date noted above, to withhold cardiopulmonary resuscitation (cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, defibrillation, and related procedures) from the patient in the event of the patient's cardiac or respiratory arrest. I further direct such personnel to provide the patient other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or alleviate pain.

\_\_\_\_\_  
Physician's Printed Name

\_\_\_\_\_  
Physician's Signature

\_\_\_\_\_  
Emergency Phone Number

\_\_\_\_\_  
Patient's Signature

\_\_\_\_\_  
Signature of Person Authorized to Consent on the Patient's Behalf

# **CHAPTER 15**

## **FORM 9: DURABLE POWER OF ATTORNEY**

### **FORM LETS PERSON SHARE POWER OVER THEIR PROPERTY AND MONEY**

This form lets a person during life share power with someone else to let them do things with the person's money, property, debt, and other things. Many people just call this form a "Financial Power of Attorney". This books form is based on a form that some lawyers in Virginia use, and there is no standard form.

### **FORM GIVES POWER TO LET SOMEONE CONTROL PROPERTY AND MONEY**

The form lets a person (called in the form the "Principal") share power with someone (who is called in the form the "Agent" or "Attorney-in-Fact") to do things to control the person's money, property, and other things. Doing this can let the Agent use accounts, pay bills, buy or sell things, sign contracts, hire workers, take out debt, and get information from banks and others. Often named as Agent is a trusted person like a spouse, other relative, or a close friend. Doing this form might avoid need for more serious options like a guardian, conservator, or nursing home. Note, a person until they are incapacitated can act for themselves or overrule their Agent and even fire the Agent. This form is often called "General" since power given is fairly broad. The form is called "Durable" since power of the form continues even after a person is incapacitated.

### **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, or by carelessness allow some other harms. A person acting as Agent has a duty to be loyal and act reasonably and can be sued for improper actions, but they may later be out of money to pay. Usually banks and others can't be blamed for obeying an Agent. The law is complex and basic acts of an Agent may be fine like paying bills, but some acts may be improper like making gifts, risky investments, or unusual acts. It is best a person not the Agent does anything unusual.

### **PERSON SIGNS FORM WITH A NOTARY**

A person signs this form while with someone who is notary who then also signs and notarizes the form. Some people modify the form to also have 2 witnesses. The completed form can be kept by a person till needed but often is quickly given to the Agent to hold and use when needed. To cancel the form a person usually tells the Agent it is canceled and takes back any copies, and then maybe tells all places that saw the form that it is canceled. Note, some banks may later ask the Agent do a "Agent's Certification" to show the form is still valid, and this is a statutory form found in law at Va. Code § 64.2-1639.

# VIRGINIA DURABLE POWER OF ATTORNEY

## ARTICLE I APPOINTMENT OF AGENTS

**1. Agent.** I, \_\_\_\_\_, the Principal of this Power of Attorney document, who resides in or at \_\_\_\_\_, Virginia, USA, do hereby appoint \_\_\_\_\_, as my true and lawful Agent. All references to "my Agent" shall include the initial agent and any successor agent or agents appointed under this instrument.

**2. Successor Agent.** If a person I made Agent in this document does die, resign, or becomes unable to serve by reason of incapacity or otherwise, then I appoint \_\_\_\_\_ to be my Agent (to serve as successor to my other Agent). Also, any Agent of mine may appoint by written instrument any person or entity as a successor Agent if I have not otherwise named a successor Agent who is willing and able to serve. My agent may resign by giving notice to me personally or if I am incapacitated by giving the notice required by Va. Code Ann. § 64.2-1616.

**3. Incapacitation of Agent.** Any named agent shall be deemed incapacitated (1) during any period the individual is incompetent as determined by a court of competent jurisdiction; (2) during any period that a conservator or guardian for such individual has been appointed based upon his or her incapacity; (3) during any period when 2 physicians licensed to practice medicine certify in writing to the named successor Agent that such individual, as a result of illness, age, or other cause, no longer has the capacity to act prudently or effectively in his or her business or financial matters; or (4) 30 days after any named successor Agent requests that the individual acting as Agent provide a certificate from a physician licensed to practice medicine that such person has the capacity to act prudently or effectively in business and financial matters and such individual fails to provide such certification. In the event incapacity is deemed to exist by reason of subsection (4) listed here in this paragraph, capacity will be deemed to exist once certification has been provided.

**4. Reliance by Third Parties on Agent.** Any third party dealing with a named Agent including a successor may rely upon as conclusively correct an affidavit or certificate, signed under penalties of perjury, of such Agent that those persons named as prior Agents are unavailable, unable, or unwilling to act. Any person who relies in good faith upon any

representation my Agent may make regarding (1) the fact that my Agent's powers are then in effect, (2) the scope of my Agent's authority under this instrument, (3) my competency at the time this instrument was executed, (4) the fact that this instrument has not been revoked, and (5) the fact that my Agent continues to serve as my Agent, shall not incur any liability to me, my estate, or my heirs, successors, or assigns for permitting my Agent to exercise any power granted to my Agent hereunder.

## **ARTICLE II. AUTHORITY**

**1. GENERAL GRANT OF AUTHORITY.** I hereby grant to my Agent the general authority to do all acts that I could do. Such grant of authority also includes without limitation the full authority to act in my name and transact business as I may do in my own name, personally, with respect to the following:

**(a) Real Property.** My Agent shall have the powers set forth in Virginia Code § 64.21625, including but not limited to the power to buy, sell, insure, develop, encumber, exchange, and lease any part or all of my real property and execute and record any transfer on death deed or any instrument effectively revoking a previously recorded transfer on death deed;

**(b) Tangible Personal Property.** My Agent shall have the powers set forth in Virginia Code § 64.21626, including but not limited to the power to buy, receive, sell, lease, exchange, convey, encumber, manage, conserve, insure, move, and store my tangible personal property;

**(c) Stock, Bonds, Commodities and Options.** My Agent shall have the powers set forth in Virginia Code §§ 64.21627 and 64.21628, including but not limited to the power to buy, sell, or exchange stocks, bonds, or other investments on my behalf; establish, continue, modify, or terminate accounts with brokers of securities; pledge stocks or bonds as security to borrow, pay, renew, or extend the time of payment of a debt; and to authorize or terminate agency accounts with third parties;

**(d) Banks and Other Financial Institutions.** My Agent shall have the powers set forth in Virginia Code § 64.21629, including but not limited to the power to establish, add, or deposit to, withdraw by check or electronic funds, or transfer from or terminate any of my accounts or deposits in banks or other financial institutions; borrow money or execute notes on such terms as my Agent may deem appropriate; and enter any safe deposit box that I may be the lessee of and remove or add to its contents;

**(e) Operation of Entity or Business.** My Agent shall have the powers set forth in Virginia Code § 64.21630, including but not limited to the power to form, operate, buy, sell, or liquidate all or any part of any entity or business; buy, sell, enlarge, reduce, or terminate an ownership interest in any entity or business; exercise all rights I may have as an owner in person or by proxy; and change the form or name of any entity or business;

**(f) Insurance and Annuities.** My Agent shall have the powers set forth in Virginia Code § 64.21631, including but not limited to the power to pay the premium on, make a contribution to, modify, exchange, rescind, release, terminate, sell, or pledge any interest in an insurance or annuity contract procured by me or on my behalf, including contracts for life, casualty, disability, health and long term care insurance; and borrow against or obtain the cash surrender value of any life insurance or annuity contract;

**(g) Estates, Trusts and Other Beneficial Interests.** My Agent shall have the powers set forth in Virginia Code § 64.21632, including but not limited to the power to accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from any estate, trust, or other beneficial interest; transfer and convey any of my property to the trustee(s) serving under any revocable trust created by me (alone or with other persons), including any transfer-on-death, pay-on-death or beneficiary designation; exercise for my benefit any presently exercisable general power of appointment; initiate and participate in any settlement or compromise with respect to litigation or other dispute concerning any interest in an estate or trust; and renounce, reject, disclaim, release, or consent to a cut in or modification of a share in or payment from an estate, trust, or other beneficial interest;

**(h) Claims and Litigation.** My Agent shall have the powers set forth in Virginia Code § 64.21633, including but not limited to the power to assert and maintain before a court or administrative agency any claim, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover anything of value or damages sustained by me; make or accept a tender, offer of judgment, or admission of facts; bind me in litigation or settlement; waive the issuance and service of process; appear on my behalf; pay a judgment, award, or other order against me; and receive payments in settlement of or as proceeds of a claim or litigation;

**(i) Personal and Family Maintenance.** My Agent shall have the powers set forth in Virginia Code § 64.21634, including but not limited to the power to perform the acts necessary to maintain my customary standard of living and that of my spouse, the

individuals legally entitled to my support, and the individuals whom I have customarily supported or indicated the intent to support; and act as my personal representative pursuant to the Health Insurance Portability and Accountability Act and any similar state statute for the purpose of paying for health care ordered by my health care agent or me;

**(j) Benefits from Governmental Programs or Civil or Military Service.** My Agent shall have the powers set forth in Virginia Code § 64.21635, including but not limited to the power to enroll in, apply for, select, reject, change, amend, or discontinue any benefit or program, such as Social Security, Medicare, Medicaid and the Department of Veterans Affairs; prepare, file, or maintain a claim for any benefit or assistance, financial or otherwise, to which I may be entitled; and receive the proceeds of any such claim;

**(k) Retirement Plans.** My Agent shall have the powers set forth in Virginia Code § 64.21636, including but not limited to the power to select the form and timing of payments, make a rollover, establish a Plan in my name, make a contribution or withdrawal, exercise investment powers and borrow from or sell assets to a Plan; amend or terminate individual retirement accounts or other retirement or deferred income arrangements; change custodians of any Plan; and make selections of optional benefits offered by my employer and exercise continuation rights as to any benefits;

**(l) Taxes.** My Agent shall have the powers set forth in Virginia Code § 64.21637, including but not limited to the power to prepare, sign or file federal, state, local, or foreign income (including U.S. Form 1040 and Virginia Form 760), gift (including U.S. Form 709), payroll, property or other tax returns, claims for refunds, requests for extension of time or any other tax-related documents (including U.S. Form 2848); pay taxes due; collect refunds; receive confidential information; contest deficiencies; exercise any election available to me; and act for me in all tax matters for all periods from 1985 to 2095 before the IRS or other taxing authority; and

**(m) Advisors and Other Professionals.** My Agent shall have the power to employ or terminate accountants, brokers, custodians, health care providers and managers, investment advisors, insurance professionals, attorneys, and other advisors or agents as my Agent deems advisable, including my Agent or any firm with which my Agent or my Agent's spouse is associated or related; rely upon such advice and services furnished by such advisors or agents; and pay them reasonable compensation.

## **2. EXPRESS GRANT OF AUTHORITY.**

**(a) Gifts.** My Agent shall have the powers set forth in Virginia Code § 64.21638 to make gifts of cash or other property, including interests in real property, as follows:

- (i) To such individuals or charitable organizations as I shall direct;
- (ii) To any one or more charitable organizations in total or partial satisfaction of any outstanding charitable pledges of mine;
- (iii) To or for the benefit of any one or more charitable organizations consistent with my pattern of giving as determined by my Agent, in my Agent's sole discretion;
- (iv) To or for the benefit of any one or more of my descendants, their spouses, and any other persons to whom I have made gifts during my lifetime; provided the amount, when added to all gifts previously made by me or on my behalf (and if I am married by my spouse or on my spouse's behalf) in the same calendar year to such individual, does not exceed the federal gift tax annual exclusion then in effect (including gift-splitting if I am married) by delivery to the respective donee, to a custodian under the Uniform Transfers (or Gifts) to Minors Act (with the designation "age 21" or "age 25," if applicable) of any jurisdiction in which the donee or custodian resides, to the owner of a § 529 plan or ABLE account or to a trustee of an existing trust for benefit of the donee;
- (v) To any one or more beneficiaries named in my will or revocable trust agreement in total or partial satisfaction of any bequests, devises, or equivalent trust distributions to such beneficiary or beneficiaries determined at the time of such gifts; provided, however, my Agent, in accordance with Virginia Code § 64.2-417, shall either (i) indicate in a contemporaneous writing delivered to the donee that the gift is to be deducted from or is in satisfaction of the bequest, devise or equivalent trust distribution or (ii) receive from the donee a written acknowledgment that the gift is to be deducted from the bequest, devise or equivalent trust distribution;
- (vi) To make payments as provided under Internal Revenue Code § 2503(e) for (i) the tuition of any one or more of my descendants and their spouses (including the unmarried surviving spouses of deceased descendants) directly to the educational organization providing the education or training to him or her and (ii) the allowable medical and dental care expenses of any one or more of the same individuals directly to any person or institution providing such care.

Except for gifts made at my direction, my Agent shall first determine in good faith before making any gift on my behalf that my estate is sufficient to make such gifts after considering my current and foreseeable future needs, comfort, obligations, and resources.



**(b) Rights of Survivorship.** My Agent may create, change, or terminate any ownership arrangement, including bank and brokerage accounts, in which I am a joint tenant owning an interest with one or more person with rights of survivorship, provided that at my death the assets pass in a manner which is consistent with any existing estate plan which I may have previously instituted.

**(c) Beneficiary Designations.** My Agent may create a new beneficiary designation or change an existing beneficiary designation on any retirement plan as well as on any other account in which I own an interest at a bank, credit union, brokerage firm, insurance company, or other financial institution, provided that at my death, the assets pass in a manner which is consistent with any existing estate plan which I may have previously instituted. The term "retirement plan" shall include any employee or self-employed benefit plan, individual retirement account, pension plan, thrift plan, stock bonus plan, tax sheltered annuity (whether payable to me or another), profit-sharing plan, or any other plan, arrangement or account which is qualified for favorable income tax treatment.

**(d) Delegation.** My Agent may delegate any authority granted under this power of attorney to any person or entity and revoke any authority so delegated.

**(e) Digital Assets.** My Agent shall have the power to access, modify, transfer, handle, distribute, delete, and control my digital assets as defined under Virginia Code § 64.2116, including the content of any electronic communications, regardless of the ownership of the physical device upon which the digital asset or content is stored.

**(f) Pets.** My Agent shall have the power to pay expenses from the feeding, care (including veterinary costs), and shelter of my pets. If care of such pets becomes unreasonably burdensome for my Agent or is not in my best interest, my Agent may transfer such pets to a person, humane society, or animal rescue organization, chosen by my Agent, who is willing to care for such pets and compensate them. If any such pet is unable to continue living with a comfortable quality of life, my Agent may direct that such pet shall be humanely euthanized.

### **3. RESTRICTIONS ON AUTHORITY.**

**(a) Foreign Accounts.** My Agent shall have no power over any foreign account unless my Agent has expressly accepted that power in writing.

**(b) Self-Dealing.** My Agent may participate in decisions about any interest I may have in any corporation, limited liability company, or limited or general partnership even if my Agent has an individual interest in that entity. My Agent may deal with and make

investments through any person or entity even if my Agent is related to that person or entity as a family member, beneficiary, owner, partner, member, manager, employee, stockholder, director, or fiduciary. In addition, except as otherwise expressly provided in this power of attorney, my Agent may enter into any transaction on my behalf without court approval notwithstanding my Agent's personal interest, provided my Agent determines in good faith that the purchase price and terms are fair and reasonable.

### **ARTICLE III COMPLIANCE WITH HIPAA**

I authorize my Agent to obtain my protected health information and medical records and consent to release these to third parties, and I authorize all health care providers to release my protected health information and medical records to my Agent.

### **ARTICLE IV DURABILITY**

This power of attorney shall not terminate upon my disability or incapacity.

### **ARTICLE V REVOCATION**

I may revoke this power of attorney by a written instrument explicitly revoking it (such as a revocation or a new power of attorney expressly revoking all former powers of attorney) or by physical destruction of all executed originals.

### **ARTICLE VI INDUCEMENT TO AND PROTECTION OF THIRD PARTIES**

Any third party may rely on either an original of this power of attorney or a photocopy, portable document format, other electronically transmitted copy, or facsimile of this power of attorney until the third party receives notice or has actual knowledge of my death or that I have limited, amended, or revoked this power of attorney. For myself and for my heirs, executors, legal representatives, and assigns, I agree to indemnify and hold harmless any third party from and against any and all claims or liability that may arise or be asserted against such third party who relies on this instrument's provisions. No third party shall have a responsibility or duty to inquire into, determine, or ensure the proper disposition or application of funds or property in any transaction with my Agent.

## **ARTICLE VII AGENT'S DUTIES**

**1. Due Care.** My Agent shall use due care to act in my best interest in accordance with the terms of this instrument.

**2. Liability for Breach of Fiduciary Duty.** My Agent, as a fiduciary under Virginia law, shall be liable for any breach of legal duty owed to me.

**3. No Liability for Retention of Property.** My Agent may hold, invest, and reinvest any property owned by me without being under any duty to diversify the property or to invest in income-producing property and without regard for any statutory restrictions on the investment powers of fiduciaries, including the "prudent investor rule" and the "prudent man rule."

**4. No Commingling of Property.** My Agent shall not commingle my property with the property of my Agent.

**5. Records.** My Agent shall keep a record of all receipts, disbursements, and significant actions taken under this instrument.

**6. Accounting.** Upon my personal demand, or if I am incapacitated or deceased, upon the written demand of any of the persons listed below, my Agent shall account for all receipts, disbursements, investment transactions, and other significant actions taken under this instrument: (a) Any personal representative of my estate; (b) Any person named in or pursuant to this instrument as a successor Agent; (c) The trustee of any revocable trust created by me; (d) My spouse; and (e) My children.

## **ARTICLE VIII MISCELLANEOUS PROVISIONS**

**1. Guardianship and Conservatorship Proceedings.** In any court proceeding for the appointment of a legal guardian of my person or legal guardian or conservator of my property, I hereby nominate my then serving Agent to serve in those capacities and request that no surety be required on my Agent's bond as my guardian or conservator.

**2. Compensation and Expenses.** My Agent shall receive no compensation for my Agent's services but shall be entitled to receive reimbursement of reasonable expenses.

**3. No General Power of Appointment.** I intend that any authority granted to my Agent shall be construed and limited to prevent my Agent from being taxed on my income and to prevent my property from being considered subject to a "general power of appointment" exercisable by my Agent, as the Internal Revenue Code defines that term.

**4. Enforceability and Severability.** If any provision of this instrument is held

unenforceable or invalid, such unenforceability or invalidity shall not affect other provisions or applications of this instrument that can be given effect without the invalid provision or application and to this end the provisions of this instrument are severable.

**5. Terms.** "My Agent" includes any substitute, alternate, or successor Agent. Where appropriate to the context, any gender shall include the other genders; and the singular shall include the plural, and vice versa. "Plan" shall refer to any qualified retirement plan, individual retirement account, or similar tax-deferred retirement arrangement or annuity subject to the distribution rules of Section 401(a)(9) of the Internal Revenue Code. Except as otherwise provided here, the "Internal Revenue Code" shall refer to the Internal Revenue Code of 1986, as amended from time to time, and any subsequent corresponding provisions and interpretive laws, regulations, or rulings.

**6. Counterparts.** This instrument may be executed in more than one counterpart, any one of which shall, for all purposes, be deemed an original. A certified copy of this instrument shall also be deemed an original.

**SIGNATURE**

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Signature of Principal

**NOTARY**

**COMMONWEALTH OF VIRGINIA**

**COUNTY/CITY OF \_\_\_\_\_**

I, the undersigned, a Notary Public in and for the Commonwealth of Virginia, do certify that \_\_\_\_\_, the Principal, whose name is signed to the writing above dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has acknowledged the same before me in the jurisdiction aforesaid.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[SEAL]

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

# CHAPTER 16

## FORM 10: POWER OF ATTORNEY OVER CHILD

### FORM LETS PARENT GIVE POWER TO SOMEONE OVER MINOR CHILD

This Chapter actually has 2 forms though they are similar. These forms let a parent say they give power over a minor child under age 18 to person they name so they can make decisions about the child.

### FIRST FORM IS UNOFFICIAL AND GIVES POWER OVER CHILD TO SOMEONE

The first form in this Chapter is not official so some doctors and schools and others may later not follow it at all. This form says it lets a parent give power over a child under 18 to a person to let them help with the child and make decisions about the child's health care, school, food, discipline, housing, travel, and more. This form can be completed fairly easily by a parent signing with the help of a notary. Usually the Agent can be overruled or fired anytime by the parent who gave them power. Doing the form may avoid need for legal action like a custody change. This form is valid for 6 months from when signed but it can be done again. The form gives no power over big issues like marriage, custody, or adoption. Many people do this form just so the person watching a child has something in writing in case police or school or doctors want some proof.

### SECOND FORM IS MORE OFFICIAL BUT NEEDS SIGNATURE OF AGENCY

This second form is similar to the first form, and does mostly the same things to let someone help with a child and control things. This form is an official statutory form but completing it can be a hassle since a parent must sign in front of a person from a "child-placing agency" who then also signs, and these places are sometimes called a foster-care agency, adoption agency, or child society. These groups are often willing to help only if need is great, like a parent will be away for immigration, military, medical care, or prison reasons. These groups usually do a criminal background check on the person who is being given power over a child. In the form a person can have the form be valid for 180 days or if the person is being deployed for the military a person can have the form be valid longer. A parent who wants to give a person even more official power over a child can get a judge to grant someone temporary custody.

### SIGN FIRST FORM WITH NOTARY AND SECOND FORM WITH AGENCY

For the first form to be valid a person must sign it with a notary who then signs too and notarizes it. For the second form to be valid a person must sign in front of a person from a child-placing agency who then signs the form too. The second form has an optional place for a 2nd parent to sign too, and doing this is recommended. The second form also has a place for person getting power to later sign the form. Once completed usually these forms are quickly given to the person getting power to use if ever needed. To cancel these form a parent who did the form usually tells the person who got power it is canceled and takes back copies and, also, maybe tells places that saw the form that it is canceled.

# POWER OF ATTORNEY OVER CHILD

I, \_\_\_\_\_ residing at \_\_\_\_\_,  
\_\_\_\_\_ am a parent of  
\_\_\_\_\_ born on \_\_\_\_\_ (called herein "child").

I as principal hereby name \_\_\_\_\_ as my agent under the Uniform Power of Attorney Act of the Code of Virginia and give my agent power and authority to act in any way I myself could do if I were personally present in anything involving or concerning the child. My agent may do anything necessary or convenient to exercise their power and authority.

Without limitation my agent shall have power and authority over the child's health care, medications, diagnostic care, X-rays, dental care, admission to facilities, insurance, school, extra-curricular events, sports, schedule, custody, insurance, cars, property, and legal affairs.

Without limitation my agent may control and consent to the child's medical and related treatment, all without delay or attempt to contact me or other person, and all without need for any degree of emergency or need being shown.

I agree to pay for any medical treatment or other goods or services provided due to this Power of Attorney and specifically medical or related treatment given the child.

This Power of Attorney and authority granted my agent are effective immediately and shall expire and be ineffective 6 months after the date signed below.

Notwithstanding any other provision no power over marriage or adoption is given.

Any person or party may rely on the validity of this power of attorney or a copy of it unless they know it has terminated or is invalid. I agree to indemnify any person or party for any claims that arise against them because of reliance on this Power of Attorney.

**This Power of Attorney shall not be affected by my subsequent disability or incapacity or any doubt as to if I am alive, or by lapse of time.**

## SIGNATURE AND ACKNOWLEDGMENT

_____ Signature	_____ Printed Name	_____ Date
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[ Notary ]

State of \_\_\_\_\_

County/City of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ (date), by  
\_\_\_\_\_ (name of principal).

(Seal, if any)

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

My Commission Expires: \_\_\_\_\_

Notary Identification Number: \_\_\_\_\_

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# POWER OF ATTORNEY TO DELEGATE PARENTAL OR LEGAL CUSTODIAL POWERS PURSUANT TO VA. CODE § 20-167

1. I/We certify that I/we am/are the parent or legal custodian of:

Minor child full name: \_\_\_\_\_ Date of birth: \_\_\_\_\_

Minor child full name: \_\_\_\_\_ Date of birth: \_\_\_\_\_

Minor child full name: \_\_\_\_\_ Date of birth: \_\_\_\_\_

Minor child full name: \_\_\_\_\_ Date of birth: \_\_\_\_\_

2. I/We designate \_\_\_\_\_

\_\_\_\_\_  
(insert full name, address, and phone number of designated attorney-in-fact) as the attorney-in-fact of each child listed above.

3. I/We delegate to the attorney-in-fact **all of my/our power and authority regarding the care, custody, and property of each minor child named above**, including the right to enroll the child in school, the right to inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function, or treatment that may concern the child. This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child. I/We understand that this power of attorney shall not operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of any child under Title 20 of the Code of Virginia, and I/we understand that I/we shall continue to be bound by any obligations in such order. By my/our signature below, I/we hereby certify that I/we am/are not executing this power of attorney for any unlawful purpose or for the primary purpose of enrolling my/our child/children in a school for the sole purpose of participating in the academic or interscholastic athletics programs provided by that school.



4. This power of attorney is effective for a period not to exceed 180 days, beginning \_\_\_\_\_ (insert date) and ending \_\_\_\_\_ (insert date).  
I/We reserve the right to revoke this authority at any time.

**- OR -**

I/We am/are a service member, as defined by § 20-166 of the Code of Virginia, and am/are on, or am/are scheduled to be on, active duty for a period that is set to last longer than 180 days. This power of attorney is effective for a period not to exceed the period of active duty plus 30 days, beginning \_\_\_\_\_ (insert date) and ending \_\_\_\_\_ (insert date). I/We reserve the right to revoke this authority at any time.

### **SIGNATURE**

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

Signature(s) of 1st parent/legal custodian: \_\_\_\_\_

[OPTIONAL] Signature(s) of 2nd parent/legal custodian: \_\_\_\_\_

### **ACCEPTANCE BY ATTORNEY-IN-FACT**

5. I hereby accept my designation as attorney-in-fact for the minor child/children specified in this power of attorney and agree to act at all times in the best interests of the child/children specified herein and within the limits of the powers delegated to me. I understand that this power of attorney does not change or modify any parental or legal rights, obligations, or authority established by an existing court order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the children specified herein. By my signature below, I affirm that I have received notice of any existing court order regarding the custody, visitation, or support of the child/children and agree to honor the rights of a parent or legal custodian of the child/children as specified in such order.

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

Signature of attorney-in-fact: \_\_\_\_\_

### **CHILD-PLACING AGENCY**

6. I, \_\_\_\_\_ (insert name of representative of licensed child-placing agency), on behalf of \_\_\_\_\_ (insert name of licensed child-placing agency), hereby approve the designation of the aforementioned attorney-in-fact for the minor children specified in this power of attorney and accept responsibility for the supervision of the placement during the time the child/children is/are in the care of the attorney-in-fact.

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

Signature of representative of licensed child-placing agency: \_\_\_\_\_

# CHAPTER 17

## FORM 11: DESIGNATION TO CONTROL DISPOSITION OF REMAINS

### LETS AGENT BE NAMED OR INSTRUCTIONS GIVEN IN FUNERAL MATTERS

This form lets a person name a person to be in charge of funeral and related matters and also give written instructions about this.

### IN FORM PERSON CAN BE NAMED AGENT TO BE IN CHARGE

The person doing this form (called the “designator”) can name someone (called “designee”) to control their funeral and related issues. If this form isn’t done then by law control of all this is by closest family members (in order this means a spouse, children, parents, and siblings). This form is rarely used, like if it seems family would do a bad job due to being too upset, being bad with money, or likely to do unwanted things.

### IN FORM CAN GIVE INSTRUCTIONS FOR FUNERAL AND BODY

Instructions can be put about funeral and related matters all must follow, like about cremation or burial, funeral home, church, ceremonies, invitees, cemetery, tombstone, readings, decorations, food, and music. Note, if after a death “Direct Funeral” or “Direct Cremation” is done which has no delay or family watching, this can reduce the cost. People can be less demanding, like “Do a Direct Funeral anywhere, use simple grave marker, and in a month hold a dinner with family and friends”. Or be more demanding, like “I want Ox Funeral Home, Catholic vigil, Full Mass, Catholic burial”. Many people push for money saving, like “Try to spend under \$1000 on me after my death”. Many people skip instructions to avoid possible issues and just trust family to try to do what a person mentioned they wanted. Funeral and related matters are paid for by any pre-paid accounts, insurance, and decedent’s money and property.

### PERSON SIGNS FORM WITH NOTARY

The form is signed by a person in front of a person who is a notary and then the notary notarizes it and signs too. Later the person given power must sign the bottom. Any funeral home must get the form within 48 hours of getting the body. The form should be kept so it is found soon after death, like near Will or given to family to hold. Most people tell family what they want done. To cancel the form a person can tear it up, throw it away, mark it canceled, or tell everyone it is canceled.

# **DESIGNATION TO CONTROL DISPOSITION OF REMAINS**

( Va. Code § 54.1-2825 )

I, \_\_\_\_\_ (called here the "designator") who lives in \_\_\_\_\_, Virginia, hereby designate \_\_\_\_\_ (called here the "designee") as the individual who shall make arrangements and be otherwise responsible for my funeral and the disposition of my remains, including cremation, interment, entombment, or memorialization, or some combination thereof, upon my death.

Designee shall have priority over all persons otherwise entitled to make such arrangements if a copy of this writing is provided to the funeral service establishment and to the cemetery, if any, no later than 48 hours after the funeral service establishment has received the remains.

Designee shall have no power before designee signs to accept this designation.

I provide the following suggestions for my agent:

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(attach additional pages if needed)

## **SIGNATURE OF DESIGNATOR**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

## **NOTARY**

State of \_\_\_\_\_

County/City of \_\_\_\_\_

This document was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_ the person who signed above.

(Seal, if any)

Signature of Notary Public \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Notary Identification Number: \_\_\_\_\_

## **ACCEPTANCE OF DESIGNEE**

I accept designation of me as the person to make funeral, burial, and other arrangements.

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

# **APPENDIX**

## **HOW TO GET FORMS AND 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 Henrico County, Virginia 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. LIST OF SPOUSE AND CHILDREN.** To help show I am mentally competent and have sufficient memory to make a Will I wish to list any living spouse and living children I now have. I currently have the following living spouse and living children:

none

**2. 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 \_\_\_\_\_.

SKIPPED

**3. 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.

**4. 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 my sister who survive me with persons just named who survive me taking the share of non-survivors, then if anything remains

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.

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

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

In this Will no part left unfilled is a mistake including spaces in the residue clause.

The facts support and I want Virginia state law to apply to this Will and my estate.

I order that my just debts, funeral and related expenses, and taxes be paid as soon after my death as practical but only those items my Personal Representative chooses to pay.

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

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

I am intentionally not providing by Will or other ways for some family, including I am not providing for some children of mine and also children of a deceased child of mine.

If a gift Will reasonably mentions survival then survival is an absolute condition and anti-lapse laws or similar provisions have no effect and without survival the gift lapses. Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive me the part to them lapses and instead goes to other surviving recipients.

No earlier transfer reduces a Will gift unless I usually called it a loan or advancement.

In this Will any gender or gendered word includes all genders, and the singular includes the plural and vice versa, and “they” can mean a single person or many persons.

Unless a Will specifically says otherwise a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, and a recipient of a Will gift of property takes it subject to debts. Also, no recipient of property who may lose it or who pays to keep it may have my estate or others pay or do exoneration.

If during my life I disposed of an item in a specific gift then the gift is extinguished (including ademption shall apply and it adeems).

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 in the time and manner they choose. Any Personal Representative or other fiduciary shall have all powers and authorities conferred by statute or common law in any jurisdiction they may act. In addition to powers granted by law I grant any Personal Representative the powers in Va. Code § 64.2-105, whether dealing with assets subject to administration in Virginia or elsewhere, which powers are incorporated by reference and made part of this Will. I give any Personal Representative full management and control of all estate assets, without restriction to the incorporated powers.

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

If context permits the terms Personal Representative and Executor and Administrator

are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and Custodian are interchangeable, and residue and residuary are interchangeable. Any such person may stand in the place of and have all powers like the others named here.

The residue includes lapsed or failed gifts, insurance paid to the estate, digital assets, inheritances owed me, and all I had power of appointment or testamentary disposition over.

Any Personal Representative may access, manage, delete, modify, transfer, and otherwise control any digital accounts and assets I had any interest in or power over.

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

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having 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 Virginia Uniform Transfers to Minors Act or similar law anywhere, and may pick a person to be Custodian including themselves.

### TESTATOR

IN WITNESS WHEREOF, I declare that this instrument is my Will which I make as Testator and I have voluntarily signed on the 8th day of June, 2022.

Paul Samuel Maxwell

Signature of Testator

### WITNESSES

We, the Witnesses who sign below, and who are now at least 18 years of age and are competent to witness this Will, do hereby certify that Paul Samuel Maxwell, the Testator, has signed, sealed, acknowledged, and declared the foregoing instrument as and for the Will of the Testator in the presence of both of us two Witnesses, and both us Witnesses in Testator's presence at the Testator's request and in the presence of each other and the Testator have hereunto subscribed our names to act as and be attesting witnesses, on the 8th day of June, 2022.

Susan Ann Moon

Signature of Witness #1

14 2nd St., Chesapeake, VA 23422

Address of Witness #1

Eve Mable Walker

Signature of Witness #2

35 Buffalo Road, Denver, Colorado 80101

Address of Witness #2

**Sample Filled Out Form: Last Will and Testament (Guardian)**  
**with many gifts in Gifts section, Guardian Clause used, and Residue Given By Percentages**

## LAST WILL AND TESTAMENT

I, Paul Brian Baker, of City of Alexandria, Virginia, 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. LIST OF SPOUSE AND CHILDREN.** To help show I am mentally competent and have sufficient memory to make a Will I wish to list any living spouse and living children I now have. I currently have the following living spouse and living children:

Ruth May Baker wife Oscar Elliot Baker young son  
Karen Lisa Lundy daughter Derek Rupert Baker son.

**2. 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 and Ford Truck to Loretta Marsha Baxter.

I give buildings, land, and fixtures at 63 Wentworth Road, Arlington, Virginia,  
to Kenneth Alan Ford.

I give all real property and fixtures I own in Loudoun County in Virginia to  
Amy Marie Fox and Pamela Sue Fox.

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

I give Irish jewelry and my wedding ring to Mary Natalie Swanson.

I give all jewelry not given above to Kay Baxter and Mary Baxter.

I give \$781.35 to Mary Natalie Swanson and Kevin Kilby.

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

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

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

**3. 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.



**4. 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 Baker who survive me with persons just named who survive me taking the share of non-survivors, then if anything remains

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

**5. ADMINISTRATION.** I nominate and appoint Ruth May Baker as Personal Representative including for me, my Will, and my estate.

**6. GUARDIAN.** I name, nominate, and appoint Amanda Sue Brubaker my sister to be Guardian of the Person of any minor child of mine and also to have care, authority, custody, and other control of them. I also name this same person to be Guardian of the Estate for any minor child and also to have care, control, and power over their property, money, and estate (including if helpful as Conservator).

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

In this Will no part left unfilled is a mistake including spaces in the residue clause.

The facts support and I want Virginia state law to apply to this Will and my estate.

I order that my just debts, funeral and related expenses, and taxes be paid as soon after my death as practical but only those items my Personal Representative chooses to pay.

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

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

I am intentionally not providing by Will or other ways for some family, including I am not providing for some children of mine and also children of a deceased child of mine.

If a gift Will reasonably mentions survival then survival is an absolute condition and anti-lapse laws or similar provisions have no effect and without survival the gift lapses. Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive me the part to them lapses and instead goes to other surviving recipients.

No earlier transfer reduces a Will gift unless I usually called it a loan or advancement.

In this Will any gender or gendered word includes all genders, and the singular includes the plural and vice versa, and “they” can mean a single person or many persons.

If during my life I disposed of an item in a specific gift then the gift is extinguished (including ademption shall apply and it adeems).

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.

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

If context permits the terms Personal Representative and Executor and Administrator are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and Custodian are interchangeable, and residue and residuary are interchangeable. Any such person may stand in the place of and have all powers like the others named here.

The residue includes lapsed or failed gifts, insurance paid to the estate, digital assets, inheritances owed me, and all I had power of appointment or testamentary disposition over.

Any Personal Representative may access, manage, delete, modify, transfer, and otherwise control any digital accounts and assets I had any interest in or power over.

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

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having 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 Virginia Uniform Transfers to Minors Act or similar law anywhere, and may pick a person to be Custodian including themselves.

### **TESTATOR**

IN WITNESS WHEREOF, I declare that this instrument is my Will which I make as Testator and I have voluntarily signed on the 30th day of December, 20 21.

*Paul Brian Baker*

Signature of Testator

### **WITNESSES**

We, the Witnesses who sign below, and who are now at least 18 years of age and are competent to witness this Will, do hereby certify that Paul Brian Baker, the Testator, has signed, sealed, acknowledged, and declared the foregoing instrument as and for the Will of the Testator in the presence of both of us two Witnesses, and both us Witnesses in Testator's presence at the Testator's request and in the presence of each other and the Testator have hereunto subscribed our names to act as and be attesting witnesses, on the 30th day of December, 20 21.

*Olivia Anna Paulson*

Signature of Witness #1

82 Forest Road, Lakewood, VA 20188

Address of Witness #1

*Matthew John Paulson*

Signature of Witness #2

82 Forest Road, Lakewood, VA 20188

Address of Witness #2

**Sample Filled Out Form: Last Will and Testament (Standard)**  
**with Will modified to have a 1 Part Residue Clause**

## LAST WILL AND TESTAMENT

I, John David Smith, of Chesterfield County, Virginia, 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. LIST OF SPOUSE AND CHILDREN.** To help show I am mentally competent and have sufficient memory to make a Will I wish to list any living spouse and living children I now have. I currently have the following living spouse and living children:

my son Adam Michael Smith

**2. 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 \$200 to each of my nieces and nephews so about \$2,800 in total.

I give \$400 to Garner Food Shelf in Roanoke, Virginia

I give \$340 to my old church Salem Christian Church in Pueblo, Colorado.

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

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

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

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

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

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

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

**3. 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.

**4. 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 Judy Paula Ford who survive me and to the lineal descendants per stirpes of a person just named who did not survive me.

**5. ADMINISTRATION.** I nominate and appoint Judy Paula Ford my sister as Personal Representative including for me, my Will, and my estate.

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

In this Will no part left unfilled is a mistake including spaces in the residue clause.

The facts support and I want Virginia state law to apply to this Will and my estate.

I order that my just debts, funeral and related expenses, and taxes be paid as soon after my death as practical but only those items my Personal Representative chooses to pay.

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

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

I am intentionally not providing by Will or other ways for some family, including I am not providing for some children of mine and also children of a deceased child of mine.

If a gift Will reasonably mentions survival then survival is an absolute condition and anti-lapse laws or similar provisions have no effect and without survival the gift lapses. Unless a Will gift specifies otherwise if a Will gift goes to multiple recipients if any do not survive me the part to them lapses and instead goes to other surviving recipients.

No earlier transfer reduces a Will gift unless I usually called it a loan or advancement.

In this Will any gender or gendered word includes all genders, and the singular includes the plural and vice versa, and “they” can mean a single person or many persons.

Unless a Will specifically says otherwise a secured debt including a mortgage or lien shall not be paid off including by a Personal Representative or in probate, and a recipient of a Will gift of property takes it subject to debts. Also, no recipient of property who may lose it or who pays to keep it may have my estate or others pay or do exoneration.

If during my life I disposed of an item in a specific gift then the gift is extinguished (including ademption shall apply and it adeems).

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 in the time and manner they choose. Any Personal Representative or other fiduciary shall have all powers and authorities conferred by statute or common law in any jurisdiction they may act. In addition to powers granted by law I grant any Personal Representative the powers in Va. Code § 64.2-105, whether dealing with assets subject to administration in Virginia or elsewhere, which powers are incorporated by reference and

made part of this Will. I give any Personal Representative full management and control of all estate assets, without restriction to the incorporated powers.

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

The residue includes lapsed or failed gifts, insurance paid to the estate, digital assets, inheritances owed me, and all I had power of appointment or testamentary disposition over.

Any Personal Representative may access, manage, delete, modify, transfer, and otherwise control any digital accounts and assets I had any interest in or power over.

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

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having 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 Virginia Uniform Transfers to Minors Act or similar law anywhere, and may pick a person to be Custodian including themselves.

### **TESTATOR**

IN WITNESS WHEREOF, I declare that this instrument is my Will which I make as Testator and I have voluntarily signed on the 21st day of June, 2023.

*John David Smith*

Signature of Testator

### **WITNESSES**

We, the Witnesses who sign below, and who are now at least 18 years of age and are competent to witness this Will, do hereby certify that John David Smith the Testator, has signed, sealed, acknowledged, and declared the foregoing instrument as and for the Will of the Testator in the presence of both of us two Witnesses, and both us Witnesses in Testator's presence at the Testator's request and in the presence of each other and the Testator have hereunto subscribed our names to act as and be attesting witnesses, on the 21st day of June, 2023.

*Mark Elliot Potter*

Signature of Witness #1

2 Spruce St, Sherwood, VA 23431

Address of Witness #1

*Ann Paula Blom*

Signature of Witness #2

80 Oak Road, Arlington, Virginia 24415

Address of Witness #2

Sample Filled Out Form: Self-Proving Affidavit

**SELF-PROVING AFFIDAVIT**

STATE OF VIRGINIA

COUNTY/CITY OF CHESTERFIELD COUNTY

Before me, the undersigned authority, on this day personally appeared John David Smith, Mark Elliot Potter, and Ann Paula Blom, known to me to be the Testator and the Witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, John David Smith the Testator, declared to me and to the Witnesses in my presence that said instrument is the Will of the Testator and that the Testator had willingly signed, and executed it in the presence of said Witnesses as the Testator's free and voluntary act for the purposes therein expressed; that said Witnesses stated before me that the foregoing Will was executed and acknowledged by the Testator as the Will of Testator in the presence of said Witnesses who, in the Testator's presence and at the Testator's request, and in the presence of each other, did subscribe their names thereto acting as attesting witnesses on the day of the date of said Will, and that the Testator, at the time of the execution of said Will, was over the age of 18 years and of sound and disposing mind and memory.

John David Smith

Testator

Mark Elliot Potter

Witness

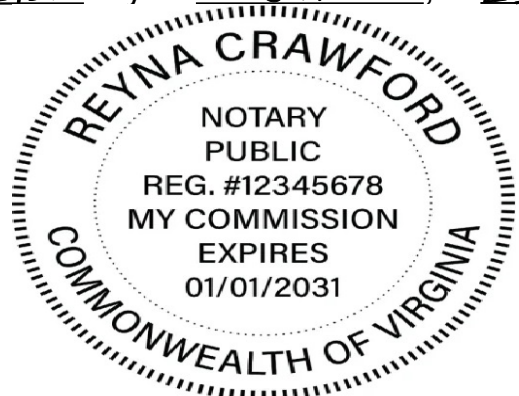
Ann Paula Blom

Witness

Subscribed, sworn and acknowledged before me by John David Smith, the Testator, and subscribed and sworn before me by Mark Elliot Potter, and Ann Paula Blom, Witnesses, this 21st day of June, 2023.

SIGNED Reyna Crawford

(OFFICIAL CAPACITY OF OFFICER)



## 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 many pages of these writings which should all be seen as one document. If there are conflicts among such writings the provisions of the more recent writing will revoke the inconsistent provisions of a prior writing.

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

<b><u>DESCRIPTION OF PROPERTY</u></b>	<b><u>NAME OF PERSONS TO GET PROPERTY</u></b>
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 with number 382937	to Mary Lott
chainsaw with number 89930	to Matt Smith
antique lanterns + repair kits	to Sue Wu maid at Hart Hotel
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
all clothing except hats at cabin	to Melissa and Wendy Smith
	to
	to
	to

DATE: 5-15-2024

SIGNED: John David Smith