

**DAVENPORT'S  
WEST VIRGINIA WILLS  
AND  
ESTATE PLANNING  
LEGAL FORMS**

**written by attorneys  
Alex Russell and Robert Maxwell**

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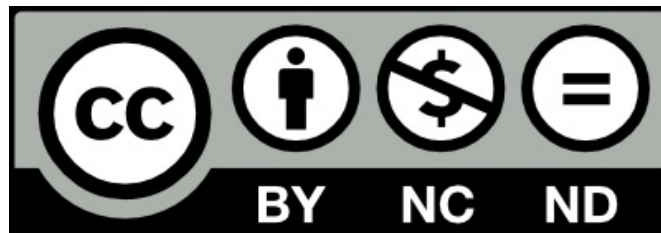
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# CHAPTER 1

## BOOK BASICS AND LIST OF FORMS

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

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

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

Estate Planning is mostly doing simple things in 3 areas: Will Related, Health Care, and Giving Power. There are about 9 ready to use West Virginia legal forms in the book. Many people use just 1 to 3 legal forms.

#### WILL RELATED FORMS

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

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

**Form 3. Handwritten Will** – this Will skips the usual need for 2 witnesses which saves time and work, but it must be all handwritten by person doing the Will (so no use of typing, computers, or legal forms).

**Form 4. Self-Proving Affidavit** – form sometimes done with Will to help prove it was properly signed.

#### HEALTH CARE FORMS

**Form 5. Medical Power Of Attorney** – this form lets a person name someone to be Agent to control health care if the person is ever incapacitated and also give some health care instructions.

**Form 6. Living Will** – lets a person do serious act of saying stop most health care if later they are incapacitated and doctors think the health situation is very bad and more care likely won't help.

**Form 7. Portable Orders For Scope Of Treatment – And – Do-Not-Resuscitate** – these 2 serious forms let people say immediately don't try certain medical treatments with 1 form just covering resuscitation.

#### GIVING POWER FORMS

**Form 8. Statutory Form Power Of Attorney** – lets power over money, property, and more be given to a trusted person so they have power to do things, like use accounts, pay bills, get records, and sell property.

**Form 9. Affidavit For Consent For Health Care For A Minor – And – Temporary Care / Custody Agreement** – these 2 forms let power over issues involving a young child be held and used by a nonparent.

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

This book is only for West Virginia since Estate Planning law and legal documents do vary in each state. Whether local Estate Planning law applies is based on a person's primary residence (often called "domicile"). Many judges say residence occurs if a person lives in a place and for a moment has no clear plans to leave. Later plans to move don't matter till people actually move. People can stay under a state's Estate Planning laws even if they leave the state if living elsewhere is temporary and people always have firm plans to return. For example, people who leave for months or more for travel, for school, for special work projects, and the military often can keep legal ties to their old state. Immigrants here of any kind can do normal Estate Planning. For health care people often do legal documents to match the state a hospital or other health facility is in.

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

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

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

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

## **LEGAL FORMS CAN HELP AND THIS BOOK PROVIDES "STANDARD FORMS"**

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

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

Despite what many people think Estate Planning often does not greatly change the costs, taxes, delays, and work involved in these areas, so it often is not vital and worth spending much money and energy on. Benefits seem very low for young people even if parents since only about 4% of people die by age 50, and only about 0.13% of children under 18 had both parents die to need big legal help. See *Social Security Tables: Felicitie Bell; Parent Mortality Census SIPP Paper #288*. Instead of costly Estate Planning many people buy life insurance like some people pay yearly for \$100,000 term life without exam ("simplified issue").

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

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

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

When filling out a legal form except for signatures other parts can be filled in by someone not doing the form with good handwriting or typing. After a form is done usually people try to keep the original and hand out copies. Some people have everyone sign multiple copies to have multiple 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 documents.

- A “Codicil” can modify a Will but it is easier and legally safer to just rewrite the whole Will.
- Some people do a “Pet Trust” to help a pet, but it’s easier to just give money in Will to person given a pet.
- Though separate forms exist most people handle Organ Donation in drivers license or state ID paperwork.
- Some people do a “Revocable Living Trust” so a Trust entity with Trustee holds property or money during their life, usually done to after death avoid small delay, costs, or work of others (by “avoiding probate”). But this is rarely done as it requires immediately moving most of a person’s things to a Trust causing maybe years of hassles, mostly for small later benefits for people who are likely happy to do later work to get some things.
- “Childrens Trust” papers can be done (like in a Will) so a Trust at a death gets money or property for a minor child to manage until 18, but this is uncommon due to possible cost and hassles, since it rarely matters (as this book explains), and since most Wills already arrange other legal help for young children.
- West Virginia has no separate form giving power over a funeral or dead body and this is done in other forms.
- West Virginia does not let a short “Gift List” or “personal property memo” gift smaller items outside of a Will.

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

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

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

Usually no tax is owed as a result of a death, including no estate, inheritance, death, or similar taxes. This is because the Federal Estate And Gift Tax only starts when a tax credit is used up covering \$12.92 million a person in 2023 or later. West Virginia no longer has an estate, inheritance, death, or similar tax. In rare cases a person or their estate here may owe a bit of tax for property held in a different state.

# CHAPTER 2

## TERMS, PROPERTY LAW, AND HELPFUL INFORMATION FORM

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

Some legal terms and ideas are basic to Estate Planning.

- “Estate Planning” is about people doing legal documents to control things if later absent, sick, or dead. After a document is done people are mostly free to sell or transfer property, instruct doctors, or change forms.
- A “person doing a legal document” and “doing a form” means the form is for and affects that person.
- A “Will” or “will” (this book uses upper case “W”) is a legal document done to control issues after death. The phrase “Last Will And Testament” is used since a “Testament” long ago was a small document done along with a Will to do some things. If no Will is done a person is described as being “intestate”.
- A person who died is called the “decedent” or “deceased”. A person getting a Will gift is called “recipient”, “beneficiary”, or “heir” if related (they “inherit”). “Survive” or “surviving” is to be alive after someone died.
- A person named to handle and do things after someone’s death is usually called an “Executor”, but if a judge has to pick someone they are called an “Administrator”. The term “Personal Representative” covers both these terms and is increasingly more often used in Wills in West Virginia and in other legal papers.
- A person doing a Will is called “Testator” or “Will maker”. Before about 1990 a woman Testator was called a “Testatrix” and woman Executor called an “Executrix” but this is no longer often done.
- “Probate” is a legal process to do things after someone’s death like transfer property, handle creditors, and authorize a Guardian. Due to nice changes in law probate is now often informal, faster, and less costly.
- “Property” is either: 1) “real property” which is land and buildings (“real estate”), 2) “personal property” which is things not real property, like cash, accounts, stocks, tools, clothes, cars, jewelry, and art, or 3) “fixtures” which are things tied to real property (like fences, posts, lighting, and wired-in appliances).
- Legal documents to control health care things are often called “Advanced Directives”.
- In West Virginia a person under 18 is usually called a “minor” and often a parent or guardian helps them. A minor or other person not reasonably able to make wise decisions lacks “capacity” and is “incapacitated”.
- Forms giving power to someone are often called “Power of Attorney” forms. The person giving power is called the “Principal” and person getting power is called the “Attorney-in-Fact” or “Agent”.
- State law is the “West Virginia Code”. A law is called a “statute” or a “section” often shown by “§” or “s”. West Virginia law is divided in about 100 parts called “Chapters”, for example Chapter 41 deals with Wills. A law can be referred to in a few ways, like West Virginia Code § 41-1-1 or just W. Va. Code § 41-1-1. A legal form written in state law for people to find and use if wanted is usually called a “statutory form”.



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

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

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

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

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

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

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

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

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

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

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

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

## ESTATE PLANNING HELPFUL INFORMATION

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

1. Personal Information (Name, Birthdate, Social Security #, 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, vehicle loan, 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 codes/keys:

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

# CHAPTER 3

## WILL BASICS

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

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

### SIGN WILL WITH 2 WITNESSES

#### A WEST VIRGINIA WILL USUALLY MUST BE WRITTEN AND HAVE 2 WITNESSES

To be a valid Will in West Virginia usually it must a) show it is meant as a Will by its title or wording, b) be done on paper, and c) be signed with 2 witnesses. A “Video Will” or “Audio Will” or similar usually has no legal effect here. West Virginia does let a person doing a Will skip using 2 witnesses if they handwrite the entire Will and this option without witnesses, a “Handwritten Will”, is explained later in this book.

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

A person to act as a witness must be at least age 18. It is not required but preferable a witness not be old or live far away. Often used as witnesses are neighbors, friends, strangers, or family. Witnesses can be named in a Will as Executor, Guardian, or to other jobs but it is a bit better if these people are not witnesses.

#### WITNESSES OR THEIR SPOUSE USUALLY SHOULDN’T BENEFIT FROM A WILL

A person benefitting from a Will or their spouse usually should not be a witness. Though such a person can be used to complete a Will under West Virginia state law any Will gifts to them or their spouse or other benefits likely will be ignored and not carried out. A small exception is made saying a witness or their spouse can still get up to the amount they’d get by “intestate law” if there were no Will. To avoid this issue usually witnesses are chosen who won’t benefit directly or through a spouse by a Will.

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

Usually a person doing the Will must sign it with 2 witnesses who then also sign the Will. People should be in 1 room and see all others sign. Witnesses and Testator showing an ID is not required but common. A Testator or witness usually do use their full legal name in a Will unless they dislike it and rarely used it. The Testator need not initial Will pages. The witnesses usually only read the 1 paragraph they sign below. People who can’t move a hand to sign should consult a lawyer. A Testator need not verbally tell people it is their Will, but if this is done it is usually called “publishing a Will”. Though not required often a Testator says a thing like, “My name is \_\_\_\_\_ and this is the Will I want and do voluntarily and want people to witness”. Some Testators chat with witnesses a few minutes about a Will to help show they know what they’re doing.

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

People should keep a Will so it can be found within days of a death, like in a desk, drawer, safe, or less often safe deposit box. It can be given to a person to hold. It may help to tell others how to find and get a Will. West Virginia unlike some states usually does not let people during their life file Wills at court for safekeeping.

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

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

## **MOST WILLS SAY TO SKIP COSTLY BOND**

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

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

Most Wills say people may later do “informal probate” which can avoid later costs and delays. In informal probate usually just 1 short hearing at court is required and probate is usually done in well under 1 year. Also, if a decedent left under \$50,000 of things usually simpler probate options can be used to do things.

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

#### **WILL NAMES “EXECUTOR” TO ACT AND HAVE POWER AFTER A DEATH**

Usually a Will names someone as “Executor” to act after a death like carry out gifts, handle debts, and do probate. The law gives Executors many, many powers and rights to do stuff like collect property and money and then give this to new owners. If a Will does not name an Executor a judge can pick someone, but family may argue about who to pick. Naming 2 people to both do this job is possible but rare due to risk of arguments and delay, and since any 1 person named should be trusted. The person named Executor can get Will gifts. In West Virginia the term “Personal Representative” is increasingly used in Wills and papers for a person handling things after a death but many people and this book still use the older term of Executor.

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

West Virginia law has a fee schedule that says usually pay an Executor about 4% of the value of the estate and property they handle. But many people think this is too much pay and West Virginia law lets a Will say to not pay the Executor. This book’s Will forms say to not pay an Executor. Also often an Executor doesn’t ask for pay to not owe income tax and leave more money to carry out Will gifts. Any lawyer hired by an Executor is usually paid hourly or a fixed sum. Expenses an Executor has like for lawyers, probate costs and fees, insurance, repairs, mortgage payments, utilities, and similar is fully paid back from estate assets.

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

By law a person to be Executor must be 18 or older. Under West Virginia law they needn’t have a clean criminal record, or be a state resident or citizen if they’re named in a Will (but work is easier if they’re local). Also, a judge may block or remove a person doing a bad job or who is unsuitable like for past major crimes. Some people name a 2nd person to be Executor if the 1st person is unavailable, but most skip this since it’s rarely needed, if a problem is seen a new Will can be done, or a judge can pick someone. But to add such a 2nd person a bit can be added to a Will, like: “or if they are reasonably unable to serve I name \_\_\_\_ to serve”.

# **CHAPTER 4**

## **WILL GIFTS INCLUDING RESIDUE CLAUSE**

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

Most people use a Will to say what happens to their property and money after their death, usually by saying various Will gifts to occur when they die. Verbal and even writings about this are not usually valid if outside a proper Will. A Will can control property acquired after it was signed. The very end of this chapter explains “intestate law” which controls where a person’s things go after death if no valid Will handles things.

### **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**

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

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

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

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

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

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

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

### **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 clearly 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 attorneys fees, and due to this conditions are rarely put on Will gifts.

## **SOME PEOPLE ADD “ALTERNATE BENEFICIARY” MAYBE 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 a new person 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”.

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

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

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## **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” is about “how” to spread things and means “by branch”, and basically tries to divide things so basically 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 Ed Wu and 10% to Joe Hud”.

## **LATER DIVORCE OR MURDER CANCELS WILL GIFTS**

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

## **WEST VIRGINIA LAW DOES NOT LET A “LIST” OR “MEMO” ADD GIFTS TO A WILL**

The law in West Virginia unlike many states does not officially let a “List” or “Memo” be done outside a Will to add gifts. Despite this many people do a list or memo and trust their family to follow it (see next paragraph).

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

After a death many families all agree to unofficially let people take small items in ways a dead person mentioned, wrote on memo or list or note, put on stickers, or would want, and this often is not a problem at all. Due to this though technically a list or memo outside a Will is not legally binding many people still write them. But if anyone objects a judge may order property and money be handed out as a Will and other legal things say, but afterward people who got things are free to voluntarily re-transfer things to do what decedent wanted.

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

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

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

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

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

### USUAL RESIDUE CLAUSE HAS 2 PARTS

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

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

#### EXAMPLE OF 2 PART RESIDUE CLAUSE:

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

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

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

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

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

A normal Residue Clause of 2 parts is often fine. A small fraction of people may want to modify a Will to have a “1 Part Residue Clause” since this tends to gift to a group more equally and some people want this. 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%.



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

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

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

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

Putting names in Wills is fairly easy. A judge or Executor assume a person meant people they know so common names are OK unless 2 friends or family use the same name. Details can help if names won't be recognized or to be friendly, like “I give \$5 to maid Sue Ax” and “I give \$5 to loyal pal Ed Lee”. If people mostly 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 \$5 to The Salvation Army, “I give \$5 to Kanawha County Library, WV”, and “I give \$5 to Lob Church in Rex, TX”. People often phone to get a charity's name.

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

Describing items in gifts is easy since people rarely own similar items, so often fine is “I give ax to Ed Wu” and “I give big table to Ann Fox”. It's OK to gift by category or list, for example “I give tools to Sam Lee” and “I give cow, van, and harp to Sue Mo”. Financial assets can use plain words, like “bank accounts” or “stocks”, but some details can help, like “UBank account ending #1511”. But using item location is risky as judges may 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” a judge may not follow, but “I give Ed Po hats at cabin” likely is OK.

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

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

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

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

It is also possible to gift real property with plain words, like a house by “I give 21 Salem Road, Wheeling, West Virginia to Mary Ellen Brown”.

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

## **“INTESTATE LAW” CONTROLS THINGS NOT COVERED BY WILL OR SIMILAR**

### **“INTESTATE LAW” CONTROLS ITEMS NOT HANDLED BY A WILL OR SIMILAR**

State “intestate law” says where a dead person’s property and money goes if there is no valid Will or if anything is left after a Will is followed or if no other transfer applies to control the money or property. Some people like what intestate law says and want it to control and intentionally skip doing a Will at all. Intestate law basically gives a dead person’s things to certain closest surviving (living) family of the person. Note, by law if a family member is dead a surviving child of them often gets to receive things in their place which is called “representation”, and “descendants” usually means a person’s children and grandchildren. West Virginia’s intestate law basically says starting at West Virginia Code § 42-1-1 as follows, in order:

#### **- - ANY SURVIVING SPOUSE OF THE DECEASED PERSON GETS AS FOLLOWS - -**

- if a spouse survives and the decedent had no surviving descendants, or the deceased person left surviving children all shared with the surviving spouse and the surviving spouse has no other living children, the surviving spouse gets all,
- if a spouse survives and decedent had surviving children which are all were shared with the surviving spouse but the surviving spouse has some other surviving children, the surviving spouse gets 3/5ths,
- if a spouse survives and decedent had surviving children which are not all shared with the surviving spouse, the surviving spouse gets 1/2,

#### **- - ANY PART NOT GOING TO A SURVIVING SPOUSE GOES AS FOLLOWS - -**

- the rest goes to any surviving closest descendants of the deceased person by representation, so usually this means the deceased person’s children, grandchildren, and/or great-grandchildren get the rest,
- if there are no surviving descendants the rest goes to first of these who survive: a) surviving parents, b) surviving descendants of parents by representation (like decedent’s brothers and sisters or nieces and nephews), c) surviving grandparents, and d) surviving descendants of grandparents by representation.
- if somehow none of the above relatives of a decedent survive then anything left goes to the State of West Virginia (it “escheats” to the state which is very rare).

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

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

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

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

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

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

# CHAPTER 5

## DEBT, MARRIAGE, AND YOUNG CHILD ISSUES

### FOR SOME PEOPLE THERE ARE DEBT, MARRIAGE, AND YOUNG CHILD ISSUES

Some people face issues about debt, marriage, and young children which require a little more legal education which this Chapter provides. But many people without these issue can skip parts of this Chapter.

### DEBT ISSUES

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

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

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

Most states in laws have "family rights" a decedent's surviving spouse or young children can choose to use, and this may let them get some of decedent's things before most of decedent's debts are paid back and also before a Will and other transfers occur. Often there is "family allowance" right to get support for family for a year, "exempt property" right to some of decedent's household items and cars, and "homestead allowance" right to claim the family house or about \$20,000 in lieu of getting this. West Virginia basically does not have these rights, but some year West Virginia law may change. And as a practical matter often family in the home can hide or fail to mention most household items of a decedent to an Executor and probably keep these items. Also not giving a spouse or young children the family house may make them try a lawsuit or fight the eviction which in rare cases may let them stay months or a year. And not giving a spouse or young children the family home may cause loss of property tax homestead status and loss of certain exemptions that may shield a house from creditors. Partly so family don't bother to use family rights or due to other things most people by Will and other ways give mostly to any spouse or children under 18 (like over 50% and any family home). The "elective share" right a spouse can use also can give a right to get a lot of property (see next page).

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

Most Wills and laws in most states say usually don't pay off secured debts like a house mortgage or vehicle lien on decedent's property even if other debts are paid off by Executor or in probate. This avoids using a lot of estate resources on paying big secured debts. But if wanted a Testator can a) gift in Will enough money to pay such debts, or b) put in Will an order to pay (like, "I order the Executor to pay the home mortgage paid off"). Most banks let new owners who got things after a death make the same monthly payments on a secured debt.

## MARRIAGE ISSUES

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

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

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

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

### “JOINT WILL” SIGNED BY BOTH SPOUSES IS NOT RECOMMENDED

Some couples sign a single “Joint Will” or “Contract To Make A Will” done by a lawyer saying a spouse gives 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 not recommended, illegal some places, and few people do this.

### SPOUSE CAN GET AN “ELECTIVE SHARE” INSTEAD OF THEM FOLLOWING WILL

In West Virginia like in many states a surviving spouse if unhappy with what a Will and other transfers may give them has a legal right to choose (elect) an “Elective Share” of their dead spouse’s things instead. This law exists so despite what a Will and other things say a surviving spouse will have resources to live on, and so divorce isn’t needed to be financially secure. The Elective Share starts at 3% of decedent’s things at 1 year of marriage, goes up by 3% yearly, and is at 50% after 15 years, and usually there is a \$25,000 minimum amount a spouse can get. The law is complex and to avoid legal tricks the Elective Share can cover items a spouse recently gifted away or controlled but didn’t technically own. Obviously if a spouse uses the Elective Share and other rights to get some of decedent’s property and money this may use up much of decedent’s things and may interfere with other transfers. For example, if a family house is the main property of a decedent the Elective Share may let a spouse claim half of this even if a Will say it goes to someone else. To avoid a spouse wanting to use the Elective Share and other rights most married people gift by Will and other ways over 1/2 of their things to any spouse (including any family house).

## YOUNG CHILD ISSUES

### A “GUARDIAN” CAN BE NAMED IN A WILL TO CARE FOR A CHILD IF NEEDED

If a parent dies with a child under 18 any other natural or adopted parent (but not step-parent) automatically gets full care and custody of the child, unless they are later unavailable or proven unfit in court which is rare. But in case it is needed (like if later both parents die) many Wills name a willing and healthy family member or friend as “Guardian” to care for a child if needed. Naming the other parent as Guardian is pointless since they usually take over if they can automatically. Many states call a Guardian for a child a “Guardian of the Person”.

### THE GUARDIAN CAN MANAGE A CHILD’S PROPERTY

Since a child till age 18 can’t legally manage money or property West Virginia law says the person named Guardian can manage a child’s money and property. The Guardian will say how to use property and money for a child’s costs (like school, living, and health care costs) till usually age 18 when all left goes to the child. State law lets a Will specifically say a Guardian needn’t check with courts for most financial issues, like using some of the principal or selling assets, and all this book’s Wills say this. Judges often hold a yearly hearing to review afterward the spending and financial actions of a Guardian. People who paid things for a child including the Guardian can ask to be paid back from the child’s assets. Importantly, most Wills also at the end say Executor may let a “Custodian” they pick manage a young child’s property and money, spend it for their benefit, and at 18 give a child all left. This is allowed by the new “Uniform Transfers To Minors Act” law and doing this can avoid hassle, costs, and delays. Note, many states call a person handling financial things for a child a “Guardian of the Estate”, and “Conservator” if the property being managed belong to an adult.

### IN RARE CASES A DIFFERENT PERSON MANAGES THE FINANCES OF A CHILD

In rare cases a Testator doesn’t trust the main Guardian’s financial abilities. If this occurs a Testator can modify a Will so a different person is also named as a Second Guardian and the Will specifically says they control any child’s property, money, estate, and other things. This is rarely done and can cause problems.

### PERSON TO BE A GUARDIAN OR SIMILAR MUST BE AT LEAST 18

A person must be at least 18 to be a Guardian or similar, but a person needn’t be a state resident or U.S. citizen. But being local does makes later work easier. The choice for Guardian by the last living parent is often followed. If no Will names a Guardian or they’re unavailable a judge can pick someone, but family may argue about this. A judge may later block or remove a person who is doing a bad job or who is unsuitable like due to past bad crimes especially if about theft or children. Naming 2 people to help a child at the same time is rare since the 2 people may argue and any 1 person named should be trusted, but some Wills name a stable married couple. Some Wills add a 2nd person in case the 1st person is later not available, like: “or if they are reasonably unable to serve I name \_\_\_\_\_ to serve”). Most people don’t name a fallback person like this since it’s rarely needed, and if it seems needed a Will can be re-done or judge name someone.

### PICKING GUARDIANS RARELY MATTERS DESPITE PARENTS WORRYING

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

# CHAPTER 6

## BASIC IDEAS ABOUT HEALTH CARE FORMS

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

Some ideas help people understand health care forms.

- By law people control their health care unless “incapacitated” by sufficient inability to a) communicate verbally or by notes, b) be rational, or c) be conscious. Unless incapacitated people just tell doctors what health care they want. In actuality most people keep control of health care till death or till no big treatment options remain, but people can worry they may be incapacitated a long time so they do health care forms.
- Parents do have power over health care of their child under age 18.
- 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 power over health care.
- In forms a person can be named to have control of health care if needed who is often called “Agent”.
- In forms people can give written health care instructions doctors, family, Agent, and others must obey.
- Some **married people** do a form to give a spouse power over health care if 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 often people do 1 fairly long health care form with a spot to give someone power over health care and a spot for instructions. Other forms are usually only done by the oldest or sickest people.
- For rare cases when stopping health care (“pulling plug”) may matter due to type of illness or extreme age:
  - most people do nothing special and trust family or Agent to decide on stopping care based on many complex 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 AND WITHOUT A GUARDIAN

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

### FORM IS A WILL WITH SEVERAL PARTS

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

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

The 2nd paragraph, “Residue”, has a Residue Clause to say any property and money left after earlier Will parts and any other transfers is gifted to persons as the Residue Clause directs.

The 3rd paragraph, “Administration”, has a space to name an “Executor” to handle legal and other matters after a person’s death (in some states this person is called a “Personal Representative”).

The 4th paragraph, “Miscellaneous”, has paragraphs of legal language to help avoid certain legal issues.

Last is a paragraph for person doing the Will to date and sign, and paragraph for the 2 witnesses to sign and put their addresses.

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

In a Will “Residue Clause” anything left over after other Will parts is transferred as the clause directs. Many people use a Residue Clause to gift most or even all things. In the Will form’s Residue Clause there is:

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

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

### TESTATOR AND 2 WITNESSES WHILE TOGETHER SIGN WILL

This Will after being filled out (except bits intentionally left blank) must be signed by the person doing the Will (the “Testator”) in front of 2 persons acting as witnesses at least age 18 who then also sign the Will. Testator and witnesses should be in 1 room and see others sign. Usually people try to pick witnesses so no Will gift is going to them or their spouse, and so no witness is named as Executor or Guardian in the Will. Witnesses usually just read the 1 paragraph they sign. Though not required often Testator says a thing like, “My name is \_\_\_\_\_ and this is my Will that I do voluntarily and want you 2 people to witness”. Once completed a Will should be kept so it can be found quickly within weeks of the Testator’s death.

# LAST WILL AND TESTAMENT

I, \_\_\_\_\_, of \_\_\_\_\_, West Virginia, do revoke all prior Wills, Testaments, and Codicils, and do make, publish, and declare this as my Will. I am now of sound mind and under no duress or undue influence and acting voluntarily.

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

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

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

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

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

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

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

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

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

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

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

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



**3. ADMINISTRATION.** I name and appoint \_\_\_\_\_  
as Executor including for me, my Will, and my estate.

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

My main home is in the state of West Virginia and its laws should apply to this Will.

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

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

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

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

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

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

Failure to make more or any Will gifts or other provisions to or for current children or a current spouse at the time I do this Will is intentional and not a mistake to remedy.

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

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

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

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

I direct that any Executor or Personal Representative should not be paid for their work including no standard percentage fee should be paid to them.

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

I give any Executor or Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts any time they in their sole discretion chooses. An Executor or Personal Representative is given all powers that may be given or held by law including powers listed in W. Va. Code §44-5A-2 and §44-5A-3 which are hereby incorporated here.

Any Executor or Personal Representative has sole discretion how to balance people’s

feelings and pick property or divide a gift to do a general gift or a gift to multiple persons.

Any Guardian with property or money owned by a minor under 18 may use or invade the principal, sell the property, and do any other action without court action or permission.

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

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

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

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

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

### **TESTATOR**

IN WITNESS WHEREOF, I, \_\_\_\_\_, the Testator hereby declare that I sign and execute this instrument as my Will and that I sign it willingly; that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence. All done in \_\_\_\_\_ County, State of West Virginia, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

### **WITNESSES**

We certify that the above instrument was on the date thereof signed, sealed and declared by the Testator, \_\_\_\_\_, as the Testator's Will in our presence and that we, in the Testator's presence and in the presence of each other, have signed our names as witnesses thereto, believing the Testator to be of sound mind at the time of signing and over the age of 18 years.

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

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

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

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

# CHAPTER 8

## FORM 2: WILL (GUARDIAN)

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

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

### FORM IS A WILL WITH SEVERAL PARTS

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

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

The 2nd paragraph, "Residue", has a Residue Clause to say any property and money left after other Will parts and any other transfers is gifted to persons as the Residue Clause directs.

The 3rd paragraph, "Administration", has a space to name an "Executor" to handle legal and other matters after a person's death (in some states this person is called a "Personal Representative").

The 4th paragraph, "Guardian", names a person to if needed care for minor children as Guardian and also if needed to manage their property and money.

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

Last is a paragraph for person doing the Will to date and sign, and paragraph for the 2 witnesses to sign and put their addresses.

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

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

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

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

### TESTATOR AND 2 WITNESSES WHILE TOGETHER SIGN WILL

This Will after being filled out (except bits intentionally left blank) must be signed by the person doing the Will (the "Testator") in front of 2 persons acting as witnesses at least age 18 who then also sign the Will. Testator and witnesses should be in 1 room and see others sign. Usually people try to pick witnesses so no Will gift is going to them or their spouse, and so no witness is named as Executor or Guardian in the Will. Witnesses usually just read the 1 paragraph they sign. Though not required often Testator says a thing like, "My name is \_\_\_\_\_ and this is my Will that I do voluntarily and want you 2 people to witness". Once completed a Will should be kept so it can be found quickly within weeks of the Testator's death.

# LAST WILL AND TESTAMENT

I, \_\_\_\_\_, of \_\_\_\_\_, West Virginia, do revoke all prior Wills, Testaments, and Codicils, and do make, publish, and declare this as my Will. I am now of sound mind and under no duress or undue influence and acting voluntarily.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**3. ADMINISTRATION.** I name and appoint \_\_\_\_\_ as Executor including for me, my Will, and my estate.

**4. GUARDIAN.** I name \_\_\_\_\_ to be if needed Guardian of any minor child of mine including to have care, authority, control, and custody of them. The Guardian shall also if needed manage and control any minor child's estate, property, money, benefits, insurance, and other things, and also if helpful be Conservator for them.

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

My main home is in the state of West Virginia and its laws should apply to this Will.

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

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

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

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

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

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

Failure to make more or any Will gifts or other provisions to or for current children or a current spouse at the time I do this Will is intentional and not a mistake to remedy.

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

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

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

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

I direct that any Executor or Personal Representative should not be paid for their work including no standard percentage fee should be paid to them.

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

I give any Executor or Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts any time they in their sole discretion chooses. An Executor or Personal Representative is given all powers that may be given or held by law including

powers listed in W. Va. Code §44-5A-2 and §44-5A-3 which are hereby incorporated here.

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

Any Guardian with property or money owned by a minor under 18 may use or invade the principal, sell the property, and do any other action without court action or permission.

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

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

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

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

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

### **TESTATOR**

IN WITNESS WHEREOF, I, \_\_\_\_\_, the Testator hereby declare that I sign and execute this instrument as my Will and that I sign it willingly; that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence. All done in \_\_\_\_\_ County, State of West Virginia, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

### **WITNESSES**

We certify that the above instrument was on the date thereof signed, sealed and declared by the Testator, \_\_\_\_\_, as the Testator's Will in our presence and that we, in the Testator's presence and in the presence of each other, have signed our names as witnesses thereto, believing the Testator to be of sound mind at the time of signing and over the age of 18 years.

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

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

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

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

## CHAPTER 9

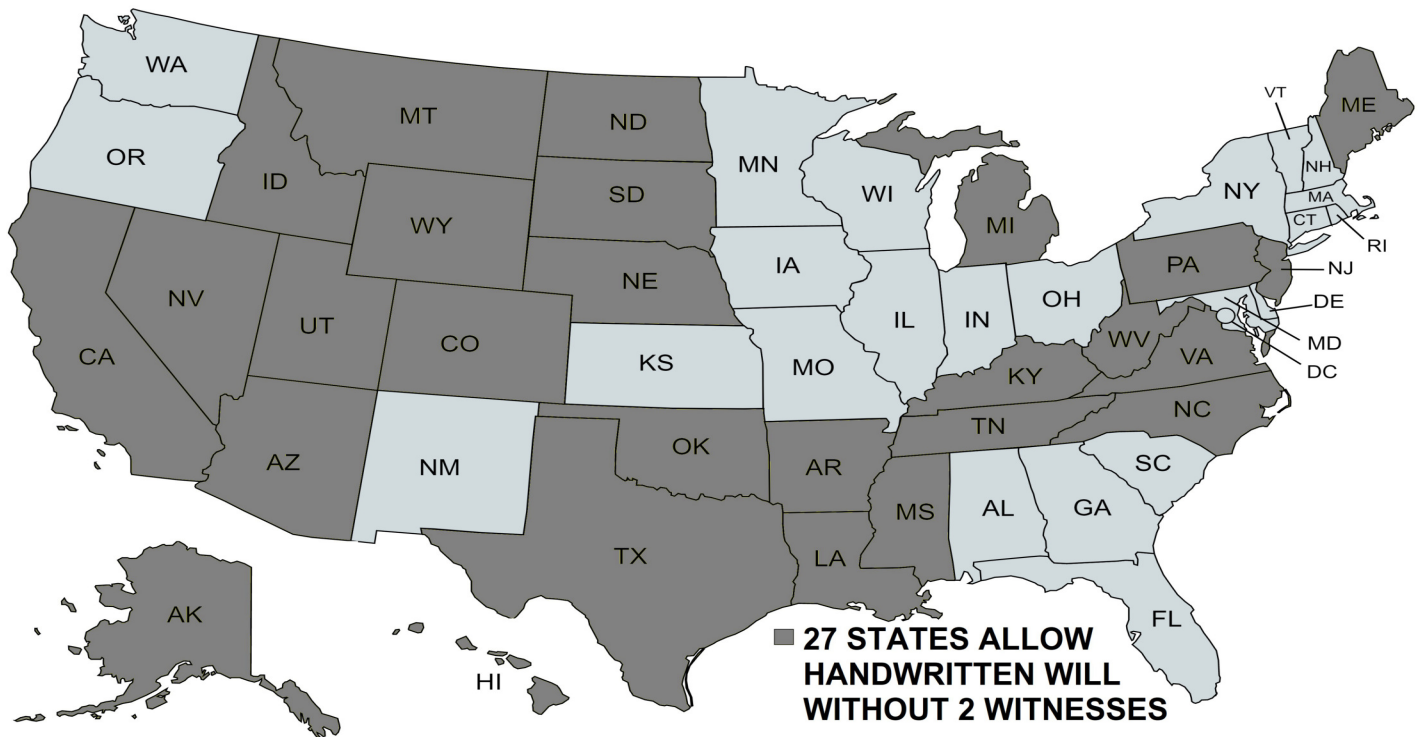
### FORM 3: HANDWRITTEN WILL

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

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

#### HANDWRITTEN WILL WITHOUT WITNESSES IS ALLOWED IN WEST VIRGINIA

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



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

Some lawyers warn against Handwritten Wills saying they often read confusingly, skip legal words that help in some cases, and are found invalid more often – but some studies show they are liked and usually fine. After a death to use a Handwritten Will in court a family member, friend, or handwriting expert must sign an affidavit or say in court the Will looks like Testator’s handwriting, which can be a hassle. But a normal Will with 2 witnesses if no Self-Proving Affidavit was done also may require some later work by people to use it. Handwritten Wills are more often used by people who are young, in a hurry, who want to fix a mistake, about to go on a trip and want to name a Guardian, who moved to a new state, or who plan a better Will later.

## WORDS ON BOTTOM OF 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 Dodd who shall be Executor. Signed: Jim Hill"*

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

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

These words below basically say the Will gifts things to persons whose names are written into the Will.

If all people named in the Will are dead then state "intestate law" usually controls and gives things to the nearest other family, but laws are complex and it may be best to re-do a Will to name new people.

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

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

### W I L L

1. *I am John Mark Hud and I now live in Kanawha County, West Virginia.  
I revoke any prior Wills and Codicils and declare this to be my Will.*
2. *I give my estate and all else I have to Ann Eve Hud and Ed Paul Hud.*
3. *I name Ann Eve Hud as Executor for me, my Will, and my estate.  
I request informal probate.*
4. *For any minor child of mine I name Mary Sue Hill as Guardian for them.*
5. *No bond or surety shall be required of any Executor or Guardian.*

*May 8, 2022*

*John Mark Hud*



# **CHAPTER 10**

## **FORM 4: SELF-PROVING AFFIDAVIT**

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

This form can be done to help with the later legal work involved with using a Will after a death.

This form must be done with a notary. This form is not required to have a valid Will and is often skipped.

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

This form helps after a death when trying to use a Will to prove it was properly signed. If a Self-Proving Affidavit form is not done more work may be needed later, like later a witness to the Will must say in court or submit a writing about how a Will signing (or if this isn't available other proof of signing can be provided). If this form is not done there is more risk a Will is not followed later. Of people doing Wills about half skip doing a Self-Proving Affidavit mostly due to the hassle of using a notary each time a Will is done, and since it mostly just saves later minor work of people who are probably happy to do work to get things using a Will. Some other states have no Self-Proving Affidavit for Wills and manage fine without it.

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

To complete the Self-Proving Affidavit form a notary (also called "notary public") must see the Affidavit signed by the Testator and 2 witnesses to the Will signing, and then the notary signs and notarizes it. The form is often done a few minutes after a Will is signed but it also can be done much later (even years later) when Testator and 2 witnesses can meet a notary. Any notary will know how to fill out and sign the Self-Proving Affidavit. The Self-Proving Affidavit is usually stapled or paper-clipped to the Will.

# SELF-PROVING AFFIDAVIT

STATE OF WEST VIRGINIA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

Before the undersigned authority this day there personally appeared \_\_\_\_\_ and \_\_\_\_\_, witnesses, both known to be credible persons above the age of 18 years, and who, being duly sworn upon their oaths respectively said that the foregoing instrument was, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, signed, sealed, published, and declared by the Testator, \_\_\_\_\_, to be the Testator's Will in the presence of each of the affiants and in the presence of each other; that said affiants, and each of them, at the Testator's request and in the Testator's presence, and in the presence of each other, did subscribe their names as the attesting witnesses to said Will on the said date described immediately above in this document; and that this affidavit is made and subscribed by said affiants at the request of said Testator and that said Testator was, in the opinion of each of said affiants, then of sound mind and over the age of 18 years.

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

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

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

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

Taken, subscribed and sworn to before me by the two witnesses whose names appear above, and subscribed by me in the presence of the Testator and the subscribing witnesses, all on the same date of the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_.

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

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

Notary's printed name: \_\_\_\_\_

# CHAPTER 11

## FORM 5: MEDICAL POWER OF ATTORNEY

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

This form lets people name a Representative for health care and give instructions to help control health care if a person is later incapacitated. This book's form is the statutory form found at W. Va. §16-30-4. This form is found online on many websites for people to do. This form is often the only form to control health care that people do. Note, some people instead do a "Combined Form" that also has a Living Will (see the next Chapter), and this Combined Form is a statutory form and is found at West Virginia Code §16-30-4.

### FORM CAN NAME "REPRESENTATIVE" AND GIVE INSTRUCTIONS

The form lets someone be named as "Representative" to control health care if later the person doing the form is incapacitated. Often named is a spouse, adult child, relative, or friend. Naming a family member like a spouse as Representative can avoid need to rush to see a judge for more power if a person falls very ill. Workers at a place giving health care usually shouldn't be Representative unless they're a family relative. In the form a second person can be named to serve but this is rarely needed and many people skip this. The form also has areas for instructions but many people skip saying much since they do trust their Representative or family and if health care instructions aren't clear this can cause delay or legal problems.

### REPRESENTATIVE CAN CONTROL FUNERAL INSTEAD OF CLOSEST FAMILY

By law a person's closest family usually controls their funeral and related things after their death. Instead of this a person can say in the Medical Power of Attorney form that their Representative should control these things. For example people could write like: "My Representative will control my bodily remains and related issues like funeral, burial, and cremation". Note, many people now write in forms they request "Direct Burial" or "Direct Cremation", and this is a more affordable option done fast in a few days and without family watching, and usually family just hold a "Celebration Dinner" after or when family later get the ashes or can visit the grave. Family and others should do all a dead person wanted if their estate can afford it.

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

The form must be signed by a) the person doing the form, b) 2 witnesses at least 18 who see the form signed who then sign too, and c) a notary who sees everyone sign and then notarizes it. A person doing the form should not use as witnesses anyone related to them by blood or marriage, likely to benefit from their Will, responsible for their medical care, their attending physician, or anyone named in their Medical Power Of Attorney. The form usually is shown to places that may give care to put in a person's medical file to follow. To cancel the form a person usually tells their doctor and any places that saw the form.

### MOST PEOPLE SKIP FILING THIS FORM IN STATE "E-DIRECTIVES REGISTRY"

Normally a person directly shows a doctor or any place that may give health care all legal forms about health care a person has done like the Medical Power Of Attorney. There is also an "e-Directives Registry" where legal forms about health care can be filed by people to let doctors, paramedics, and health care places look up a name to see if they've done a form. Most people see this as unneeded and skip it, and often health professionals don't have time or forget to look in the registry. See page end of this Chapter about the registry.

**STATE OF WEST VIRGINIA  
MEDICAL POWER OF ATTORNEY**

<b>The Person I Want To Make Health Care Decisions For Me When I Can't Make Them For Myself</b>
---

Dated: \_\_\_\_\_, 20\_\_\_\_

I, \_\_\_\_\_

(Insert your name and address), hereby appoint as my representative to act on my behalf to give, withhold, or withdraw informed consent to health care decisions in the event that I am unable to do so myself.

**The person I choose as my representative is:**

\_\_\_\_\_  
\_\_\_\_\_  
*(Insert the name, address, area code, and telephone number of the person you wish to designate as your representative. Please insert only one name.)*

**If my representative is unable, unwilling, or disqualified to serve, then I appoint as my successor representative:**

\_\_\_\_\_  
\_\_\_\_\_  
*(Insert the name, address, area code, and telephone number of the person you wish to designate as your successor representative. Please insert only one name.)*

This appointment shall extend to, but not be limited to, health care decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health care. The representative appointed by this document is specifically authorized to be granted access to my medical records and other health information and to act on my behalf to consent to, refuse, or withdraw any and all medical treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to do so, would consent to, refuse, or withdraw such treatment or procedures. This authority shall include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging interventions.

I appoint this representative because I believe this person understands my wishes and values and will act to carry into effect the health care decisions that I would make if I were able to do so and because I also believe that this person will act in my best interest when my wishes are unknown. It is my intent that my family, my physician, and all legal authorities be bound by the decisions that are made by the representative appointed by this document and it

is my intent that these decisions should not be the subject of review by any health care provider or administrative or judicial agency.

It is my intent this document be legally binding and effective and that this document be taken as a formal statement of my desire concerning the method by which any health care decisions should be made on my behalf during any period when I am unable to make such decisions.

In exercising the authority under this medical power of attorney, my representative shall act consistently with my special directives or limitations as stated below.

**SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER:** Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis, mental health treatment, funeral arrangements, autopsy, and organ donation may be placed here. My failure to provide special directives or limitations does not mean I want or refuse certain treatments.

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**THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHHOLD, OR WITHDRAW INFORMED CONSENT TO MY OWN MEDICAL CARE.**

**PRINCIPAL:**

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

\_\_\_\_\_  
Address of Principal

**WITNESSES:**

I did not sign the principal's signature above. I am at least 18 years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal or to the best of my knowledge under any will of the principal or codicil thereto, nor legally responsible for the costs of the principal's medical or other care. I am not the principal's attending physician, nor am I the representative or successor representative of the principal.

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

NOTARY:

STATE OF WEST VIRGINIA

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as principal and by \_\_\_\_\_ and \_\_\_\_\_, the two witnesses whose signatures appear above.

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

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

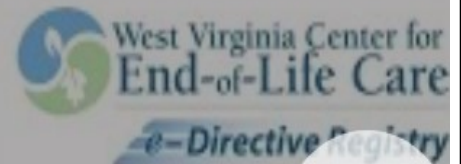
## WEST VIRGINIA E-DIRECTIVE REGISTRY

West Virginia has an optional “e-Directive Registry” some people use. For more information see [wvendlife.org/wv-e-directive-registry](http://wvendlife.org/wv-e-directive-registry) or discuss this with a medical professional.

### What is the e-Directive Registry?

This nationally recognized electronic Registry securely stores patients' medical advance care planning forms to be accessed by health care professionals for care coordination and respect of individuals' wishes. The e-Directive Registry allows these forms to be available 24/7 in the event of an emergency.

WV E-DIRECTIVE REGISTRY



WV CENTER FOR END-OF-LIFE CARE 64 Medical Center Drive, PO Box 9022 Health Sciences North | Morgantown, WV 26506  
PHONE: toll-free (877) 209-8086 or (304) 293-0695 | WV E-DIRECTIVE REGISTRY FAX: (844) 616-1415 | FAX: (304) 293-7442

This electronic Registry securely stores individuals' medical advance care planning forms to be accessed by health care professionals for care coordination and respect of individuals' wishes. Forms are then available 24/7 in the event of an emergency.

### 1. Opt-In to the Registry

The Registry uses an opt-in system to ensure individuals have autonomy over where their forms are stored and released. If you want to have your forms on the Registry and released to treating health care providers to ensure your wishes for health care are understood and respected, make sure you mark the "Opt-In" box on forms or complete the E-Directive Registry Opt-In form. The DNR card (the orange card) is **automatically** opted-in to the Registry, per state law.

### 2. Submitting Forms to the Registry

You can submit forms to the e-Directive Registry by faxing your forms to 844-616-1415 or mailing them to PO Box 9022, 64 Medical Center Drive, Morgantown, WV 26506.

By submitting forms to the e-Directive Registry, you can ensure your forms are available in the event of a health care emergency in order for medical wishes to be translated into patient care.

### 3. Revoking forms in the Registry

You can remove your forms from the Registry by calling 877-209-8086 or by completing the e-Directive Registry Advance Directive Revocation form and submitting it to our offices.

### 4. Searching the Registry

You or your legal representative may request copies of your Registry forms. To receive a copy, complete the form below and submit it with a copy of your federally issued photo ID (for verification). Please note: forms cannot be emailed.

# CHAPTER 12

## FORM 6: LIVING WILL

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

This form lets a person do serious act of saying stop health care if later doctors think it likely won't help. This book's form is the statutory form found in law at W. Va. Code §16-30-4. This form is also found online on many websites for people to find and use. Note, some people instead do a "Combined Form" that also has a Medical Power Of Attorney (see previous Chapter), and this Combined Form is a statutory form and is found at West Virginia Code §16-30-4.

### FORM SAYS STOP CARE IF LATER DOCTORS SAY IT LIKELY WON'T HELP

This form does the serious act of saying stop health care if doctors later think more care won't help. Under state law if a person has done the form, is later incapacitated, and doctors say the condition is terminal (this means they'll likely die within a year or so even if life-sustaining care is given) or is in a persistent vegetative state (neither aware of my environment nor able to interact with others), then the form will be followed to stop health care which says in its main part:

"If I am very sick and unable to communicate my wishes for myself and I am certified by one physician who has personally examined me to have a terminal condition or be in a persistent vegetative state (I am unconscious and am neither aware of environment nor able to interact with others) then I direct that life-prolonging intervention that would serve solely to prolong the dying process be withheld or withdrawn."

A fully healthy person can do the form just in case they later fall ill. But most people skip doing this form since it rarely matters, it is stressful to do, it is a hassle to arrange witnesses and a notary, and people trust their family and others to act wisely if a person is ever incapacitated and the issue of stopping care arises. Life-prolonging interventions can include: cardio-pulmonary resuscitation (CPR), the use of machines to help with heart or lung or kidney function, the use of feeding tubes or intravenous catheters to deliver fluids and blood, medicines to help the body, blood transfusions, antibiotics, and artificial nutrition and hydration.

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

The form must be signed by a) the person doing the form, b) 2 witnesses at least age 18 who see the form signed who then sign too, and c) a notary who sees everyone sign and then notarizes it. A person doing the form can't use as witnesses anyone related to them by blood or marriage, anyone likely to benefit from their Will, anyone responsible for their medical care, their attending physician, or anyone named in their Medical Power Of Attorney. Once done the form usually is shown to places that may give care to put in a person's file to follow To cancel the form a person usually tells their doctor and places that saw the form. Note, this Living Will form is filed by a few people in the state E-Directives Registry (see previous Chapter).



**STATE OF WEST VIRGINIA  
LIVING WILL**

**The Kind of Medical Treatment I Want And Don't Want  
If I Have A Terminal Condition Or Am In A Persistent Vegetative State**

Living will made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (insert day, month, and year).

I, \_\_\_\_\_, (*Insert your name*)  
being of sound mind, willfully and voluntarily declare that I want my wishes to be respected if I  
am very sick and unable to communicate my wishes for myself. In the absence of my ability to  
give directions regarding the use of life-prolonging intervention, it is my desire that my dying  
may not be prolonged under the following circumstances:

If I am very sick and unable to communicate my wishes for myself and I am certified by one  
physician who has personally examined me to have a terminal condition or be in a persistent  
vegetative state (I am unconscious and am neither aware of environment nor able to interact  
with others) then I direct that life-prolonging intervention that would serve solely to prolong the  
dying process be withheld or withdrawn. I understand that by signing this document I am  
agreeing to the REMOVAL or REFUSAL of cardiopulmonary resuscitation (CPR), breathing  
machine (ventilator), dialysis, and medically administered food and fluids, such as might be  
provided intravenously or by feeding tube. I want to be allowed to die naturally and only be  
given medications or other medical procedures necessary to keep me comfortable. I want to  
get as much medication as is necessary to alleviate my pain. Nevertheless, oral food and fluids  
may be provided by spoon or by straw, shall be offered as desired, and can be tolerated.

I give the following SPECIAL DIRECTIVES OR LIMITATIONS: (Comments about funeral  
arrangements, autopsy, mental health treatment, and organ donation may be placed here.  
My failure to provide special directives or limitations does not mean that I want or refuse  
certain treatments.)

---

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It is my intention that this living will be honored as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences resulting from such refusal.

I understand the full import of this living will.

**PRINCIPAL:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

**WITNESSES:**

I did not sign the principal's signature above for or at the direction of the principal. I am at least 18 years of age and am not related to the principal by blood or marriage, nor entitled to any portion of the estate of the principal to the best of my knowledge under any will of principal or codicil thereto, nor directly financially responsible for principal's medical care. I am not the principal's attending physician or the principal's medical power of attorney representative or successor medical power of attorney representative under a medical power of attorney.

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

**NOTARY:**

STATE OF WEST VIRGINIA

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as principal, and by \_\_\_\_\_ and \_\_\_\_\_, the two witnesses whose signatures appear above.

\_\_\_\_\_  
Notary Public  
My commission expires:\_\_\_\_\_

# CHAPTER 13

## FORM 7: PORTABLE ORDERS FOR SCOPE OF TREATMENT – AND – DO NOT RESUSCITATE

### FORMS SAY STARTING IMMEDIATELY DO NOT TRY SOME HEALTH CARE

This Chapter has 2 forms saying to immediately do not try certain medical treatments listed in the forms. Doing these forms and stopping health care people from trying some care no matter what circumstances are is rare and these 2 forms are usually done only by the terminally ill or very old. If the forms are done a person's family and even a person's health care representative or agent can not override these forms. Note, these forms can cause problems, for example they may stop resuscitation from being tried for minor things like after choking in a restaurant or if a bee sting causes a throat to swell. Both the 2 forms are short so they can be read fast, and paramedics and similar people in a rush will follow these forms but likely ignore other forms (like a Living Will or Medical Power of Attorney). The forms can be used to control care if a person is still at home and also can be used when a person plans to be in a hospital or similar place.

### P.O.S.T. FORM SAYS TO IMMEDIATELY DO NOT TRY CERTAIN HEALTH CARE

The "Physician Orders for Scope of Treatment" form is usually on pink paper and is often called the "P.O.S.T." form. This form says starting immediately various kinds of medical care shouldn't be tried if a person falls ill and health personnel are deciding what care to try. The P.O.S.T. form has several options to choose from in area A, B, C, and D, so it is seen as flexible and more helpful but the most important part is about "resuscitation" in area A. A doctor can help explain this form.

### D-N-R FORM SAYS TO IMMEDIATELY NO LONGER TRY RESUSCITATION

The "Do Not Resuscitate" form is usually on dark orange paper and is often called the "D-N-R" form. This form says starting immediately resuscitation shouldn't be tried which is attempts to restart or help the heart or breathing, and this includes cardio-pulmonary resuscitation (C.P.R.) to press chest and blow air in lungs, artificial machine breathing, and electric shocks to a heart. The D-N-R form only covers resuscitation.

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

People who do want to use these forms usually pick 1 to do and the P.O.S.T. form is more common. Either form must be signed by a doctor or similar health care professional, and also signed by the person doing the form or someone for them. Once done people can keep copies handy for themselves or family to show to paramedics or similar people. Once done people also usually show the form to their doctors and places that may give care to put a copy in their medical file. Note, even if a person has done one of these forms a paramedic or other person can still be called to take the person to get pain relief and other comfort care. To cancel these forms usually a person just says this to all persons and places that saw the form. Note, the P.O.S.T. or D-N-R forms are filed by a few people in the E-Directives Registry (see Chapter 11).



HIPAA PERMITS DISCLOSURE OF POST ORDERS TO HEALTH CARE PROVIDERS AS NECESSARY FOR TREATMENT  
SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED

## West Virginia POST Form

Adapted from the National POLST form and in compliance with WV Code §16-30-1 *et seq.*

Health care providers should complete this form only after a conversation with the patient or the patient's Medical Power of Attorney (MPOA) representative or surrogate. The POST decision-making process is for patients who are at risk for a life-threatening clinical event because they have a serious life-limiting medical condition, which may include advanced frailty. <https://polst.org/guidance-appropriate-patients-pdf>

### Patient Information.

Having a POST form is always voluntary.

#### THIS IS A MEDICAL ORDER, NOT AN ADVANCE DIRECTIVE.

Review and revise advance directives to be consistent with POST.

Patient First Name: \_\_\_\_\_ Middle Initial: \_\_\_\_\_  
Last Name: \_\_\_\_\_ Suffix (Jr, Sr, etc): \_\_\_\_\_  
Preferred Name: \_\_\_\_\_ DOB (mm/dd/yyyy): \_\_\_\_/\_\_\_\_/\_\_\_\_  
Last 4 Social Security Number: xxx-xx-\_\_\_\_ Gender (circle one): M F X  
Address: \_\_\_\_\_ Zip code: \_\_\_\_\_

### A. Cardiopulmonary Resuscitation Orders. Follow these orders if patient has no pulse and is not breathing.

Pick 1	<input type="checkbox"/> <b>YES CPR: Attempt Resuscitation, including mechanical ventilation, defibrillation and cardioversion.</b> (Requires choosing Full Treatments in Section B)	<input type="checkbox"/> <b>NO CPR: Do Not Attempt Resuscitation.</b> (May choose any option in Section B)
--------	---	---

### B. Initial Treatment Orders. Follow these orders if patient has a pulse and is breathing.

Reassess and discuss interventions with patient or MPOA representative/surrogate regularly to ensure treatments are meeting patient's care goals. Consider a time-limited trial of interventions based on goals.

Pick 1	<input type="checkbox"/> <b>Full Treatments (required if choose CPR in Section A).</b> Goal: Attempt to sustain life by all medically effective means. Provide appropriate medical and surgical treatments as indicated to attempt to prolong life, including intensive care.
	<input type="checkbox"/> <b>Selective Treatments.</b> Goal: Attempt to restore function while avoiding intensive care and resuscitation efforts (ventilator, defibrillation and cardioversion). May use non-invasive positive airway pressure, antibiotics and IV fluids as indicated. Avoid intensive care. Transfer to hospital if treatment needs cannot be met in current location.
	<input type="checkbox"/> <b>Comfort-focused Treatments.</b> Goal: Maximize comfort through symptom management; allow natural death. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Avoid treatments listed in full or select treatments unless consistent with comfort goal. Transfer to hospital <b>only</b> if comfort cannot be achieved in current setting.

### C. Additional Orders or Instructions. These orders are in addition to those above (e.g., blood products, dialysis).

EMS protocols may limit emergency responder ability to act on orders in this section.

### D. Medically Assisted Nutrition (Offer food by mouth if desired by patient, safe, and tolerated)

Pick 1	<input type="checkbox"/> Provide feeding through new or existing surgically-placed tubes	<input type="checkbox"/> No artificial means of nutrition desired
	<input type="checkbox"/> Time-limited trial of ____ days but no surgically-placed tubes	<input type="checkbox"/> Discussed but no decision made (provide standard of care)

### E. SIGNATURE: Patient or Patient Representative/Surrogate/Guardian (eSigned documents are valid)

Authorization <input type="checkbox"/>	Indicate in this box if you agree with the following statement: If I lose decision-making capacity and my condition significantly deteriorates, I give permission to my MPOA representative/surrogate to make decisions and to complete a new POST form in accordance with my expressed wishes for such a condition or if these wishes are unknown or not reasonably ascertainable, my best interests.
Opt-In <input type="checkbox"/>	Indicate in this box if you agree to have your POST and other forms submitted to the WV e-Directive Registry and released to treating health care providers to ensure your wishes are known. <b>FAX 844-616-1415</b>

I understand this form is voluntary. I have discussed my treatment options and goals of care with my provider. If signing as the patient's MPOA representative/surrogate, the treatments are consistent with the patient's expressed wishes or, if unknown, their best interests.

Patient/Patient MPOA representative/surrogate signature (required)	Date (mm/dd/yyyy)	The most recently completed, valid POST form supersedes all previously completed POST forms.
--	-------------------	--

### F. SIGNATURE: Health Care Provider (eSigned documents are valid)

Verbal orders are acceptable with follow up signature.

I have discussed this order with the patient or the patient's MPOA representative/surrogate. The orders reflect the patient's known wishes, to the best of my knowledge. [Note: Only providers with MD, DO, APRN, or PA license may sign this order]

MD/DO/APRN/PA signature (required)	Date (mm/dd/yyyy): Required / /	Phone # :
Printed Full Name: required		License/Cert. #:

Send original form with patient.

A copied, faxed, or electronic version of this form is a valid medical order.

This form does not expire.

WV Center for End-of-Life Care: 1-877-209-8086.

WV e-Directive Registry FAX: 844-616-1415

2021



**WV POST form: A Portable Medical Order**

Consistent with the National POLST form and in compliance with WV Code §16-30-1 *et seq.*

**Patient Full Name:**

Patient's Emergency Contact. (Note: Listing a person here does **not** grant them authority to be a legal representative.)

Full Name:

☐ MPOA Representative/surrogate  
☐ Other emergency contact

Phone #:

Primary Care Provider Name:

Phone:

(      )

☐ Patient is enrolled  
in hospice

Name of Agency:

Agency Phone: (      )

Reviewed patient's advance directive to confirm no  
conflict with POST orders:  
(A POST form does not replace an advance directive or living will)

☐ Yes; date of the document reviewed: \_\_\_\_\_  
☐ Conflict exists, notified patient (if patient lacks capacity, noted in chart)  
☐ Advance directive not available  
☐ No advance directive exists

Check everyone who  
participated in discussion:

☐ Patient with decision-making capacity ☐ Court-Appointed Guardian ☐ Parent of Minor  
☐ MPOA representative/Surrogate ☐ Other: \_\_\_\_\_

Professional Assisting Health Care Provider w/ Form Completion (if applicable):  
Full Name:

Date (mm/dd/yyyy):  
/ /

Phone #:  
(      )

This individual is the patient's: ☐ Social Worker ☐ Nurse ☐ Clergy ☐ Other:

**Form Information & Instructions**

- **Completing a POST form:**
  - Provider should document basis for this form in the patient's medical record notes.
  - MPOA representative/surrogate may be able to execute or void this POST form only if the patient lacks decision-making capacity.
  - Original (if available) is given to patient; provider keeps a copy in medical record.
  - If a translated POST form is used during conversation, attach the translation to the signed English form.
  - **FAX completed form to the WV e-Directive Registry at 844-616-1415 so it may be available to health care providers in emergencies.**
- **Using a POST form:**
  - Any incomplete section of POST creates no presumption about patient's preferences for treatment. Provide standard of care.
  - No defibrillator (including automated external defibrillators) or chest compressions should be used if "No CPR" is chosen.
  - For all options, use medication by any appropriate route, positioning, wound care, and other measures to relieve pain and suffering.
- **Reviewing a POST form:** This form does not expire but should be reviewed whenever the patient:
  - (1) is transferred from one care setting or level to another;
  - (2) has a substantial change in health status;
  - (3) changes primary provider; or
  - (4) changes their treatment preferences or goals of care.
- **Modifying a POST form:** This form cannot be modified. If changes are needed, void form (see below) and complete a new POST form.  
**FAX new POST form to the WV e-Directive Registry at 844-616-1415 so it may be available to health care providers in emergencies.**
- **Voiding a POST form:**
  - **If a patient or MPOA representative/surrogate (for patients lacking capacity) wants to void the form:** destroy paper form and contact patient's health care provider and the WV e-Directive Registry to void orders in patient's medical record and the Registry.
  - **For health care providers:** destroy copy (if possible), note in patient record form is voided and notify the WV e-Directive Registry.
  - *If no new form is completed, note that full treatment and resuscitation may be provided.*
- **Additional Forms.** Can be obtained by going to [www.wvendoflife.org/](http://www.wvendoflife.org/) or by calling 877-209-8086.
- As permitted by law, this form may be added to a secure electronic registry so health care providers can find it.
- **Submitting a POST form (or any form) to the WV e-Directive Registry (if Opt-In Box is initialed)**
  - With the permission of patients or their legal agents, the WV e-Directive Registry houses and makes available to treating health care providers advance directive forms, do not resuscitate (DNR) cards, Physician Orders for Scope of Treatment (POST) forms, etc. The Registry makes patients' treatment wishes known to their physicians so that they can be respected. By submitting forms to the e-Directive Registry, the patient can ensure their forms are available in the event of a health care emergency in order for medical wishes to be translated into patient care. More information is available at [www.wvendoflife.org/wv-e-directive-registry](http://www.wvendoflife.org/wv-e-directive-registry). FAX a copy of the POST form to the WV e-Directive Registry at 844-616-1415. Ensure the form is readable prior to faxing the form to the Registry. For questions, call 877-209-8086.

**VERIFICATION OF  
DO NOT RESUSCITATE ORDER**

Dear MD/DO/APRN/PA:

Please complete this card and with the permission of the patient, FAX the entire card to the WV e-Directive Registry, then detach at the perforation, give the bottom of the card to the patient, and keep the top in your records.

**REGISTRY FAX: 844-616-1415**

Last Name/First/Middle Initial: (Print legibly) \_\_\_\_\_

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

City/State/Zip: \_\_\_\_\_

Date of Birth (mm/dd/yyyy) \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Last 4 SSN

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------	----------------------

Sex

<input type="checkbox"/>	M	<input type="checkbox"/>	F
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Date: \_\_\_\_\_

**DO NOT RESUSCITATE ORDER**

As treating provider of \_\_\_\_\_

(patient name)

and a licensed MD/DO/APRN/PA, I order that this person **SHALL NOT BE RESUSCITATED** in the event of cardiac or respiratory arrest. This order has been discussed with \_\_\_\_\_ or his/her representative \_\_\_\_\_ or his/her surrogate decision maker \_\_\_\_\_ who has given consent as evidenced by his/her signature below.

MD/DO/APRN/PA Full Name (Printed) \_\_\_\_\_

MD/DO/APRN/PA Signature \_\_\_\_\_

Address \_\_\_\_\_

Person/Surrogate Signature \_\_\_\_\_

Address \_\_\_\_\_

Date of Birth (mm/dd/yyyy) \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Last 4 SSN

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------	----------------------

Sex

<input type="checkbox"/>	M	<input type="checkbox"/>	F
--------------------------	---	--------------------------	---



# CHAPTER 14

## FORM 8: STATUTORY FORM POWER OF ATTORNEY

### FORM LETS POWER BE GIVEN OVER PROPERTY, MONEY, AND MORE

This form lets a person give power to someone to do things with a person's property, money, and more. Many people call this a "Financial Power Of Attorney". This form is a statutory form found in law at W. Va. Virginia Code § 39B-3-101. Note, this form is often called "durable" since it uses the more common option of saying it still has power if the person who did the form is later incapacitated but alive. Note, this form is effective immediately once signed which is now standard and skips the older option of a "springing power of attorney" that only has power once an event can be proven (like a person has fallen ill or has left the state).

### FORM GIVES POWER TO LET SOMEONE DO THINGS

This form lets a person give power to someone trusted like a spouse, adult child, or friend over their money, property, records, and other things. The person giving power is called "Principal" and person getting power called "Agent" (sometimes called the "Attorney in Fact"). This form can let someone help do things like pay bills, use accounts, buy or sell items, sign contracts, hire workers, take out debt, and get records. The form may help if person is sick or busy, and may avoid having to use more serious legal options like a guardianship involving a court. A person who isn't incapacitated can overrule or fire the Agent at any time. Instructions or limitations for an Agent can be written but many people skip this since if things are unclear a bank or other party may delay or refuse to obey an Agent. In the form a person can say who'd they'd want as Conservator or Guardian for them, and many people fill this in since it probably won't matter and can't hurt.

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

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

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

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

### PERSON SIGNS FORM IN FRONT OF A NOTARY

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

**State of West Virginia**  
**STATUTORY FORM POWER OF ATTORNEY**  
**( West Virginia Code § 39B-3-101 )**

**IMPORTANT INFORMATION**

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, §39B-1-101 et seq. of this code.

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

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

Your agent is entitled to reasonable compensation unless you state otherwise in the special instructions. This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions. If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

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

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

**DESIGNATION OF AGENT**

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

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

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

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

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

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

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

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



## **GRANT OF GENERAL AUTHORITY**

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, §39B-1-101 et seq. of this code:

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

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

## **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

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

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

- ☐ Create, amend, revoke, or terminate an inter vivos trust
- ☐ Make a gift, subject to the limitations of the West Virginia Uniform Power of Attorney Act and any special instructions in this power of attorney
- ☐ Create or change rights of survivorship
- ☐ Create or change a beneficiary designation
- ☐ Authorize another person to use the authority granted by this power of attorney
- ☐ Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- ☐ Exercise fiduciary powers that the principal has authority to delegate
- ☐ Disclaim or refuse an interest in property, including a power of appointment
- ☐ Access the content of electronic communications

## LIMITATION ON AGENT'S AUTHORITY

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

### SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

**EFFECTIVE DATE**

This power of attorney is effective immediately unless I have stated otherwise in the special instructions.

**NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)**

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

Name of Nominee for **conservator or guardian of my estate**:

---

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

Nominee's Telephone Number:

Name of Nominee for **guardian of my person**:

Nominee's Address:

Nominee's Telephone Number:

## **RELIANCE ON THIS POWER OF ATTORNEY**

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid. Unless expressly stated otherwise, this power of attorney is durable and shall remain valid if I become incapacitated.

## **SIGNATURE AND ACKNOWLEDGMENT**

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

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

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

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

### **(NOTARY)**

**State of West Virginia**

**County of** \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ ,  
(Date)

by \_\_\_\_\_ .  
(Name of Principal)

\_\_\_\_\_  
Signature of Notary (Seal, if any)

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

## **IMPORTANT INFORMATION FOR AGENT**

### **Agent's Duties**

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

(1) Do what you know the principal reasonably expects you to do with the principal's

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

(2) Do nothing beyond the authority granted in this power of attorney; and

(3) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner: \_\_\_\_\_ by \_\_\_\_\_  
(Principal's Name) (Your Signature) as Agent

Unless the special instructions in this power of attorney state otherwise, you must also:

(1) Act loyally for the principal's benefit;

(2) Avoid conflicts that would impair your ability to act in the principal's best interest;

(3) Act with care, competence, and diligence;

(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

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

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

(1) Death of the principal;

(2) The principal's revocation of the power of attorney or your authority;

(3) The occurrence of a termination event stated in the power of attorney;

(4) The purpose of the power of attorney is fully accomplished; or

(5) If you are married to the principal, a legal action is filed with a court to end your marriage or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

### **Liability of Agent**

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, §39B-1-101 et seq. of this code. If you violate the Uniform Power of Attorney Act, as set forth in §39B-1-101 et seq. of this code, or act outside the authority granted, you may be liable for any damages caused by your violation.

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

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

(Option To Do Later Upon Request Of Bank)

State of West Virginia

County of \_\_\_\_\_

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

I, further certify that to my knowledge:

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

(2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

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

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

(Insert other relevant statements)

## AGENT'S SIGNATURE AND ACKNOWLEDGMENT

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

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

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

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

## (NOTARY)

This document was acknowledged before me on \_\_\_\_\_, (Date)

by \_\_\_\_\_ (Name of Agent)

\_\_\_\_\_  
Signature of Notary  
My commission expires: \_\_\_\_\_

(Seal, if any)

# CHAPTER 15

## FORM 9: AFFIDAVIT FOR CONSENT FOR HEALTH CARE FOR A MINOR – AND – TEMPORARY CARE / CUSTODY AGREEMENT

### FORMS LETS PARENT SHARE POWER TO SOMEONE OVER CHILD UNDER 18

These 2 forms lets power over a child under 18 be given to someone named in a form. This book's forms are based on forms from a legal aid organization with some small changes. See *legalaiddwv.org*. These forms can be used to help with a child if a parent or child is away from the other for work, school, training, drug treatment, sports, prison or jail, immigration, military, visit with family or friends, babysitting, daycare, or if child is very sick in hospital and needs someone nearby. Note, people who want to be more careful can go to court to have a judge officially do a Temporary Guardianship for a child.

### “AFFIDAVIT” FORM LETS SOMEONE CONTROL CHILD’S HEALTH CARE

The “Affidavit” form is based on the state “Caregivers Consent Act”, also called by some the “Kinship Act”. A person who is not the parent can sign the form to let them make health care decisions for a young child if 1) they are already living with a child or are related by blood or marriage, 2) the parents haven’t said to not do the health care, and 3) the parents can’t be reached in time and can’t directly come or phone doctors. In the form a person must write in a thing like: “Parents are out of state and for 12 hours haven’t answered their phones” or “The location of parents hasn’t been known for weeks and today they still can’t be found”. This form can be used in long situations (like if a child is with a relative while parents are working elsewhere and can’t phone or be found) or in brief situations (like if a child is with a family friend while parents are in jail or rehab). This form can only last for 1 year and can be canceled by a parent at any time.

### “TEMPORARY” FORM LETS PERSON CONTROL MANY THINGS ABOUT A CHILD

In the second form a parent writes to say they give “temporary custody” to a person they name over a child in certain areas. This second form is less accepted and not officially authorized by state law and some doctors and schools may refuse to follow it but this is rare. This form can be used to give power to someone over a child’s health care, home, discipline, school, money, and other issues. This form can be used when a parent will be away from a child for any reason. Some people call this a “Parental Power of Attorney” and this kind of form is very common in many states.

### THE FORMS ARE SIGNED BY PEOPLE WITH A NOTARY

The first form, the Affidavit form, is signed by a relative or someone living with a child in front of a notary who then notarizes it. This form is usually done when it seems a child may be getting sick and if parents can’t be reached so they can’t directly talk to doctors. The second form, the Temporary form, is signed by 1 or 2 parents of a child in front of a notary who then notarizes it. Doctors and schools tend to follow this form more if both 2 parents sign this form together. To cancel things a person usually takes back any forms and maybe tells everyone who saw a form it is canceled.

# AFFIDAVIT FOR CONSENT FOR HEALTH CARE FOR A MINOR

(West Virginia Code §49-2-701 et seq.; Caregivers Consent Act)

State of West Virginia,

County of \_\_\_\_\_

Name of county where you are physically located at the time you sign the document

After being duly sworn, I, \_\_\_\_\_, provide the following information: Adult Caregiver's Name

A. 1. My full name is: \_\_\_\_\_.

Adult Caregiver's First, Middle and Last Name

2. My current address is:

\_\_\_\_\_.

Adult Caregiver's Address

3. My birthdate is: \_\_\_\_\_.

Adult Caregiver's Date of Birth

4. \_\_\_\_\_ was born on \_\_\_\_\_.

Child's Name

Child's Birthdate

5. \_\_\_\_\_ has resided continuously with me since

Child's Name

\_\_\_\_\_.

Date Child Came to Live with You

6. \_\_\_\_\_ I am not related to the child; OR

\_\_\_\_\_ I am related to \_\_\_\_\_ in the following manner:

Child's Name

☐ Sibling

☐ Paternal

Grandparent/Great  
Grandparent

☐ Maternal  
Grandparent/Great  
Grandparent

☐ Paternal Aunt or Uncle

☐ Maternal Aunt or Uncle

☐ Paternal Cousin

☐ Maternal Cousin

☐ Other: \_\_\_\_\_

7. The child's mother is \_\_\_\_\_ who resides at

Mother's Name

\_\_\_\_\_.

Mother's Address

8. The child's father is \_\_\_\_\_ who resides at

Father's Name

\_\_\_\_\_  
Father's Address

9. I have attempted, but have been unable to obtain, the consent of the minor child's parents, guardian or legal custodian to allow me to obtain medical care on the child's behalf.

10. The minor child's parent, guardian or legal custodian has not refused to give consent for health care and treatment of the minor child.

11. I have made the following attempts to get consent of the minor child's parent, guardian or legal custodian to seek medical care on behalf of the minor child (detail your attempts):

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

GENERAL NOTICES:

- This consent form is promulgated pursuant to West Virginia Code §49-2-701 et seq.
- This declaration does not affect the rights of the minor child's parents, guardians or legal custodians regarding the care, custody and control of the minor, other than with respect to health care, and does not give the caregiver legal custody of the minor child.
- This affidavit is valid for one year unless the minor no longer resides in the caregiver's home. Furthermore, the minor's parent, guardian or legal custodian may rescind this affidavit of caregiver consent for a minor's health care at any time by providing written notification of the rescission to the appropriate health care professional.
- A person who relies in good faith on this affidavit of caregiver consent for a minor's health care has no obligation to conduct any further inquiry or investigation and is not subject to civil or criminal liability or to professional disciplinary action because of that reliance.

Based upon all of the statements above, I believe that I am the person who can give consent for the health care for \_\_\_\_\_.

Child's Name

\_\_\_\_\_  
Signature of Caregiver

\_\_\_\_\_  
Date

NOTARY: Acknowledged before me this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

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



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# TEMPORARY CARE / CUSTODY AGREEMENT

I, \_\_\_\_\_, a resident of \_\_\_\_\_ County, West Virginia,  
the custodial parent of the following child: (Please indicate name and birthdates of children)

Name

Birthdate

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

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

do hereby give **temporary custody** of said child (including as a Power of Attorney where I as principal give power to my agent) to: (Name, Address, and Relationship)

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

Further, I give my permission to the aforementioned person(s) to **take care of the child in his/her home** and to apply for, consent to, or otherwise obtain **any medical treatment** or any **economic, social, educational, or other services** that the child may need. I expressly give permission to this individual to **accept any State or Federal Benefits** that may be available through the Department of Health and Human Resources, or other agency, to benefit my child.

This agreement is temporary in nature and shall be immediately revocable upon written notice that the Parent desires to terminate the care agreement and resume caring for the child.

\_\_\_\_\_  
Parent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Parent Signature

\_\_\_\_\_  
Date

Taken, subscribed and sworn to before the undersigned authority this day, the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

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

# **APPENDIX: SAMPLE FILLED OUT FORMS**

TO GET FORMS TO USE PEOPLE CAN:

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

EMAIL ANY COMMENTS TO DAVENPORTPRESS@GMAIL.COM.

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

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

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

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

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

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

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

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

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

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

## LAST WILL AND TESTAMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SKIPPED

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

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

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

**3. ADMINISTRATION.** I name and appoint Susan Lee Maxwell as Executor including for me, my Will, and my estate.

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

My main home is in the state of West Virginia and its laws should apply to this Will.

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

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

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

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

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

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

Failure to make more or any Will gifts or other provisions to or for current children or a current spouse at the time I do this Will is intentional and not a mistake to remedy.

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

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

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

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

I direct that any Executor or Personal Representative should not be paid for their work including no standard percentage fee should be paid to them.

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

I give any Executor or Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts any time they in their sole discretion chooses. An Executor or Personal Representative is given all powers that may be given or held by law including powers listed in W. Va. Code §44-5A-2 and §44-5A-3 which are hereby incorporated here.

Any Executor or Personal Representative has sole discretion how to balance people’s

feelings and pick property or divide a gift to do a general gift or a gift to multiple persons.

Any Guardian with property or money owned by a minor under 18 may use or invade the principal, sell the property, and do any other action without court action or permission.

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

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

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

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

### **TESTATOR**

IN WITNESS WHEREOF, I, Paul Samuel Maxwell, the Testator hereby say that I sign and execute this instrument as my Will and that I sign it willingly; that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence. All done in Kanawha County, State of West Virginia, this 22nd day of June, 20 22.

Paul Samuel Maxwell

Signature of Testator

### **WITNESSES**

We certify that the above instrument was on the date thereof signed, sealed and declared by the Testator, Paul Samuel Maxwell, as the Testator's Will in our presence and that we, in the Testator's presence and in the presence of each other, have signed our names as witnesses thereto, believing the Testator to be of sound mind at the time of signing and over the age of 18 years.

Eve Mable Rogers

Signature of Witness

14 2nd St., Charleston, WV 25315

Address of Witness

Mary Ann Moon

Signature of Witness

835 Buffalo Road, Boise, ID 83701

Address of Witness

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

## **LAST WILL AND TESTAMENT**

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

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

I give big oak table to Anne J. Smith .

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

I give 63 Ivy Road, Wheeling, West Virginia to Kenneth Victor Poppler.

I give all real property and fixtures I own in Kanawha County, West Virginia to Amy Marie Fox .

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

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

I give wedding ring to Ruth Jones.

I give all jewelry not given above to Kay Pidoski.

I give \$781.35 to Wanda Kay Zinski .

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

I give 1998 Ford truck to John Rupert Smith .

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

I give \$1000 each to each of my grandchildren .

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

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

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

**3. ADMINISTRATION.** I name and appoint Ruth May Kent as Executor including for me, my Will, and my estate.

**4. GUARDIAN.** I name Karen Lisa Fox my sister to be if needed the Guardian of any minor child of mine including to have care, authority, control, and custody of them. The Guardian shall also if needed manage and control any minor child's estate, property, money, benefits, insurance, and other things, and also if helpful to be Conservator for them.

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

My main home is in the state of West Virginia and its laws should apply to this Will.

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

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

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

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

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

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

Failure to make more or any Will gifts or other provisions to or for current children or a current spouse at the time I do this Will is intentional and not a mistake to remedy.

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

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

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

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

I direct that any Executor or Personal Representative should not be paid for their work including no standard percentage fee should be paid to them.

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

I give any Executor or Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property



including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts any time they in their sole discretion chooses. An Executor or Personal Representative is given all powers that may be given or held by law including powers listed in W. Va. Code §44-5A-2 and §44-5A-3 which are hereby incorporated here.

Any Guardian with property or money owned by a minor under 18 may use or invade the principal, sell the property, and do any other action without court action or permission.

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

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

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

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

### **TESTATOR**

IN WITNESS WHEREOF, I , Paul Brian Kent, the Testator hereby declare that I sign and execute this instrument as my Will and that I sign it willingly; that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence. All done in Berkeley County, State of West Virginia, this 30th day of December, 2019.

*Paul Brian Kent*  
Signature of Testator

### **WITNESSES**

We certify that the above instrument was on the date thereof signed, sealed and declared by the Testator, Paul Brian Kent, as the Testator's Will in our presence and that we, in the Testator's presence and in the presence of each other, have signed our names as witnesses thereto, believing the Testator to be of sound mind at the time of signing and over the age of 18 years.

*Olivia Joy Pawlenty*  
Signature of Witness

87 Forest Road, Charleston, WV 25301  
Address of Witness

*Roy Felix Pawlenty*  
Signature of Witness

87 Forest Road, Charleston, WV 25301  
Address of Witness

## **LAST WILL AND TESTAMENT**

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

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

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

I give \$1000 to Baker Food Shelf in Cheat Lake, West Virginia.

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

**3. ADMINISTRATION.** I name and appoint **Ann Sue Baker** as Executor including for me, my Will, and my estate.

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

My main home is in the state of West Virginia and its laws should apply to this Will.

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

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

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

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

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

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

Failure to make more or any Will gifts or other provisions to or for current children or a current spouse at the time I do this Will is intentional and not a mistake to remedy.

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

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

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

I direct that any Executor or Personal Representative should not be paid for their work including no standard percentage fee should be paid to them.

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

I give any Executor or Personal Representative the a) fullest authority, discretion, and powers allowed by state law, b) power to lease, sell, mortgage, convey, or keep property including real property in a manner and time they deem helpful or proper, and c) authority to settle or pay claims or debts any time they in their sole discretion chooses. An Executor or Personal Representative is given all powers that may be given or held by law including powers listed in W. Va. Code §44-5A-2 and §44-5A-3 which are hereby incorporated here.

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

Any Guardian with property or money owned by a minor under 18 may use or invade the principal, sell the property, and do any other action without court action or permission.

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

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

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

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

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

### TESTATOR

IN WITNESS WHEREOF, I , **David Eric Smith**, the Testator hereby declare that I sign and execute this instrument as my Will and that I sign it willingly; that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence. All done in **Monongalia** County, State of West Virginia, this **21st** day of **June**, 2021.

*David Eric Smith*

Signature of Testator

### WITNESSES

We certify that the above instrument was on the date thereof signed, sealed and declared by the Testator, **David Eric Smith**, as the Testator's Will in our presence and that we, in the Testator's presence and in the presence of each other, have signed our names as witnesses thereto, believing the Testator to be of sound mind at the time of signing and over the age of 18 years.

*Harriet Potter*

Signature of Witness

*42 Spruce St, Morgantown, WV 26505*

Address of Witness

*Ann Paula Blom*

Signature of Witness

*370 Broadway Ave, Star City, WV 26505*

Address of Witness

# SELF-PROVING AFFIDAVIT

COUNTY OF Monongalia )

Before the undersigned authority this day there personally appeared Harriet Potter and Ann Paula Blom, witnesses, both known to be credible persons above the age of 18 years, and who, being duly sworn upon their oaths respectively said that the foregoing instrument was, on the 21st day of June, 2021, signed, sealed, published, and declared by the Testator, David Eric Smith, to be the Testator's Will in the presence of each of the affiants and in the presence of each other; that said affiants, and each of them, at the Testator's request and in the Testator's presence, and in the presence of each other, did subscribe their names as the attesting witnesses to said Will on the said date described immediately above in this document; and that this affidavit is made and subscribed by said affiants at the request of said Testator and that said Testator was, in the opinion of each of said affiants, then of sound mind and over the age of 18 years.

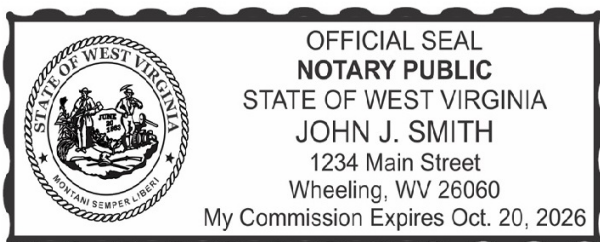
Harriet Potter  
Signature of Witness

42 Spruce St, Morgantown, WV 26505  
Address of Witness

Ann Paula Blom  
Signature of Witness

370 Broadway Ave, Star City, WV 26505  
Address of Witness

Taken, subscribed and sworn to before me by the two witnesses whose names appear above, and subscribed by me in the presence of the Testator and the subscribing witnesses, all on the same date of the 21st day of June, in the year 2021.



*John Jay Smith*  
Signature of Notary

My commission expires: 10-20-2026

Notary's printed name: John Jay Smith