

# **DAVENPORT'S SOUTH DAKOTA WILLS AND ESTATE PLANNING LEGAL FORMS**

**written by attorneys  
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# CHAPTER 1

## BOOK BASICS AND LIST OF FORMS

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

This book is about South Dakota people doing legal documents to control their health care, property, money, children, funeral, and more if later they're absent, sick, or dead. People have a right to control these matters so judges, doctors, and others 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. This book has 11 ready to use South Dakota legal forms (but most people use just a few of these).

#### 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 later gets money and property, who is Executor, and if easier options can be used later.

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

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

**Form 4. Tangible Personal Property List** – lets a person later easily add some small gifts to their Will.

**Form 5. Handwritten Will** – Will which if all handwritten by person doing it can skip need for 2 witnesses.

#### HEALTH CARE FORMS

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

**Form 7. Declaration Of Living Will** – does serious act of saying stop most health care if later doctors think more health care almost certainly won't help an incapacitated person.

**Form 8. Medical Orders For Scope Of Treatment** – does serious act of saying to paramedics, doctors, and others that immediately from now on do not try health care listed like C.P.R. or tube feeding.

#### GIVING POWER FORMS

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

**Form 10. Power Of Attorney Over Minor Child** – lets a parent share power with someone over a minor child under age 18 to use if needed including health care and school issues.

**Form 11. Designation To Control Disposition Of Remains** – lets a person give instructions and if wanted name someone to control issues with their funeral, burial, cremation, and similar matters.

## **SOUTH DAKOTA LAW ON ESTATE PLANNING COVERS MOST PEOPLE HERE**

This book is only for South Dakota since Estate Planning law and legal documents vary between states. Usually a state's Estate Planning law applies if a person's primary residence is here (often called "domicile"). Many judges say "residence" occurs if a person lives in a place and for a moment has no clear plans to leave. Later plans to move don't matter till people actually move. Note, people can stay under their previous state's Estate Planning laws after they move from it if people have some plans to leave any new state eventually. For example, people who move to a new state for months or more for travel, school, work projects, or the military often can keep legal ties to their old state. Immigrants here of any kind can do Estate Planning here. 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 major ways state law is a bit different. This book can't cover all issues but should suit almost all people without some strange situations or wishes. Strange situations or wishes that may need research or a lawyer include: a) strange gift wishes for property and money, b) wealth over \$5 million, c) big medical concerns like extreme age, d) property or money going to a person with a disability or special needs, and e) wish to move or hide assets to qualify for government help.

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

Legal forms are good at most things involved in Estate Planning and can make binding legal documents. Instead of legal forms a lawyer can be used for Estate Planning but it can be costly, take months of work, and they can make mistakes. In life people often pick a cheap option. Importantly 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 other people may not like to follow anything else. This book does provide most standard forms.

## **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 low for young people even if they're parents since only 4% of people die by age 50, and only about 0.13% of children under 18 had both parents die. *See Social Security Tables: Felicitie Bell; Parent Mortality Census SIPP Paper #288.* Many people spend more time and money on having life insurance.

## **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.

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

Forms must be properly filled in though often parts can be left blank. Except for signatures most 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. To be legally valid some legal documents need to be “witnessed”, which is someone watching the person doing the form sign and then the witness signs too. Some documents need to be “notarized” which means a person who is a “notary” sees it signed and uses an ink stamp and signs too. Notaries (also called a “notary public”) are at some banks, brokers, insurance agents, courts, law offices, libraries, and mailing-copying centers. Using a phonebook to find a notary willing to help is recommended. The words “subscribe” and “execute” means a person signed a document, and “acknowledgment” means a person said a signature was theirs. In a form the term “respectively” means “in the order just stated”. If a person signs a document in a foreign language it is usually binding.

## **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.
- Some people do a “Revocable Living Trust” so a Trust entity with a Trustee holds property or money during their life, usually done to after death have faster transfer of things and avoid small delays, costs, or work of others (by “avoiding probate”). But this is rarely done as it may require moving most of a person’s things to a Trust causing maybe years of hassle, mostly to avoid later small work for people happy to be getting things.
- “Childrens Trust” papers can be done (like as part of a Will) so at a death a Trust gets money or property for a minor child to manage until 18, but this is uncommon due to possible cost and hassle, since it rarely matters (as this book explains), and since most Wills already arrange other legal help for young children.

## **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, STATE, OR LOCAL TAX IS USUALLY OWED DUE TO A DEATH**

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

The Federal Estate And Gift Tax is the only tax that usually applies at the Federal level, and it only starts when a tax credit is used up covering \$13.99 million a person after 2024 and later.

South Dakota no longer has any state or local estate or inheritance taxes that might be owed due to a death. This is a major change and before the year 2000 often major tax was triggered by a death.

In rare cases property located in another state that a South Dakota person owns if the person dies may trigger inheritance or estate taxes in the other state. But this is rare and usually such taxes are low.

Life insurance payouts are mostly tax free.

# **CHAPTER 2**

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

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

Some legal terms and ideas are basic to Estate Planning.

- “Estate Planning” is about people doing legal documents to control things if later absent, sick, or dead. After a document is done people are mostly free to sell or transfer property, instruct doctors, or change forms.
- A “person doing a legal document” and “doing a form” means the form is for and affects that person.
- 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. The term “descendants” or “issue” usually means a person’s children and grandchildren.
- A person named to handle and do things after someone’s death is usually called an “Executor”, but if a judge has to pick someone they are called an “Administrator”. The term “Personal Representative” covers both these terms and is now the common term used in South Dakota for person doing things after a death.
- A person doing a Will is called “Testator” or “Will maker”. Before about 2000 a woman Testator was called a “Testatrix” and woman Executor called an “Executrix” but this is no longer often said or written.
- “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).
- A person under 18 is usually called a “minor” and often a parent or guardian helps them do things. A minor or other person not reasonably able to make wise decisions lacks “capacity” and is “incapacitated”.
- A document giving power to someone is often called a “Power of Attorney” where the “Principal” gives power to someone called the “Agent” or “Attorney-in-Fact” (but they needn’t be a real attorney or lawyer).
- State law is the “South Dakota Codified Laws”. Codified means most laws are put together and then given numbers to refer to them. A law is often called a “statute” or “section” shown by a “§” or “s” mark. State law can be referred to in many ways, for example like “S.D.C.L § 29A-2-501” or “SDCL 29A-2-501”. 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 AND ENTITY HOLDING THINGS**

First, the “estate” or “probate estate” means all property and money of a dead person that at death or soon after didn’t somehow legally automatically go to new owners. Second, estate is also the word for the temporary entity run by an Executor to do things after a death (it’s like a small corporation). A dead person’s money and things may be renamed or put in an account with an estate name, like “Estate of Leo Luke 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 do own. Basically by law a person usually owns all they earn as wages and salary, owns their share of income and profit tied to property they own, and owns or partly owns any things their money buys or improves. And for property with “title” documents (real estate or vehicles) or where there is a “listed owner” (like accounts) the named persons are usually the legal owners unless evidence shows special circumstances. Note, a person during life can sell property, make gifts, or transfer things even if they are named in a Will, so people should consider if they already sold or gave away property they also name in a Will gift.

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

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

- “joint tenant with right of survivorship” or similar legal options, so then property transfers automatically to the other named owners regardless of a Will, which in some states is often how spouses hold their home;
  - papers say a “life estate” exists, so then if life of someone ends the other people in papers get item; and
  - “Trust property” occurs if paperwork made a Trust entity and then property was transferred into it or this is set to occur, so then the Trust papers control where things put in the Trust go after someone’s death.
- 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**

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

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

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

# ESTATE PLANNING HELPFUL INFORMATION

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

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

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

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

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

5. Debts owed by you like credit card, loan, student loan, mortgage, 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.

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

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

A document to be a Will in South Dakota usually must 1) show it is a Will by its words, and 2) the person doing it must sign it in front of 2 persons acting as witnesses who then sign too. A Will spoken on a video or audio recording with no writing usually has no legal effect. But a Will that is all handwritten by the person doing it may be able to skip using 2 witnesses, and this Handwritten Will is covered later in this book.

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

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

#### IT IS PREFERABLE A WITNESS NOT BE NAMED IN WILL GIFTS

Unlike some states in South Dakota witnesses to a Will can be named in Will gifts, and this does not effect a Will or the gifts. Such a witness is called an “interested witness”. State law at SDCL § 29A-2-505 says in part, “The signing of a will by an interested witness does not invalidate the Will or any provision of it”. But to avoid issues often 2 people are chosen to be witnesses who aren’t named in Will gifts to get things.

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

The person doing the Will should sign it with 2 witnesses who then sign too while everyone is in 1 room and seeing others sign. People showing an I.D. is not required but is common. A Testator or witness should use their full legal name unless they dislike it and rarely use it. The Testator need not initial the Will pages. Witnesses only read the 1 paragraph they sign. Most Wills have room for witnesses to print their addresses and names. Disabled people who can’t sign by hand should see a lawyer. Legally a Testator need not say anything but often says a thing like, “My name is \_\_\_\_ and this is the Will I want and do voluntarily and want you 2 people to witness”. Some Testators chat longer with witnesses to help show they are of sound mind.

### CANCELING OLD WILLS IS USUALLY NOT A PROBLEM

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

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

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

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

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

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

People should keep a Will so it can be found within days of a death, like in a desk, drawer, safe, or less often a safe deposit box. It can be given to a person to hold. It may help to tell others how to find or get a Will. South Dakota law at SDCL 29A-2-515 lets a person during life deposit a Will at a local court for safekeeping (and withdraw it if wanted) but this is rarely done, and if this is done usually family should be told about this.

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

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

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

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

South Dakota law says normally pay an Executor 2.5% of the value of property and moneys they handle. For example, if the estate size is \$200,000 the Executor is paid \$5,000 which is usually seen as fair pay. Pay for an Executor may helpfully let money get to this person quickly even if a decedent left little and large creditors are asking to be paid. But some Testators don’t want such pay and add a Will line about this, for example like: “Any Personal Representative should be paid an hourly wage and agree to this and shall not be paid a percentage of any property or money”. In reality most Executors skip asking for pay so as to not owe income tax and leave more money to carry out Will gifts. Expenses an Executor has like insurance, probate, attorneys, repairs, mortgage payments, and utilities are paid for with estate money or property. Any lawyer an Executor hires usually is paid hourly or a fixed sum that the lawyer and Executor agree on.

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

A person to be Executor must be age 18 or older and usually not have a bad criminal record like a felony. A person to be Executor need not reside in the state but being local can make their later work much easier. Naming 2 people to both be Executor is allowed but rare due to the risk of arguments and delays, and since any 1 person named should be trusted. People can name a 2nd person to be Executor if the 1st person is not later available but most skip this since this rarely occurs and if needed a judge can pick someone. To add such a 2nd person a person could add: “or if they’re reasonably unable to serve I name \_\_\_\_ to serve”.

# **CHAPTER 4**

## **WILL GIFTS INCLUDING RESIDUE CLAUSE**

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

Most people use a Will mainly to say what happens to their property and money after their death, usually by writing down various Will gifts to occur when they die. Verbal and even writings about this are not usually valid if not in a written Will. A Will can control property acquired after it was signed. The very end of this Chapter covers “intestate law” which says where a person’s things go at death if no valid Will handles this.

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

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

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

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

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

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

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

Wills can do “general gifts” where what is gifted is not particular property but can be flexibly chosen, like “I give 1 of my 3 cars to Ed Po” which lets an Executor pick which car. The usual general gift is money, like “I give \$5 to Ed Hill”. Money gifts are easy to write, let equal gifts be made, and are safer since specific items might not be owned at death. To carry out money gifts an Executor uses some accounts or sells 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 in a Will or used in other ways, often called a “catch-all” or “left-over” clause. The Residue Clause is covered later in this Chapter.

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

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

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

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

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

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

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

To save work a Will gift can go to a group or class of people especially family if who is meant is later easy to determine. People can say about how much in total is gifted to be clearer. Examples are: “I give \$10 to each person on my 2018 soccer team” and “I give \$10 to each of my grandkids so this is about \$80 in total.”

## **FAMILIES OFTEN LET PEOPLE TAKE ITEMS UNOFFICIALLY**

Many families unofficially let people take items in ways a dead person mentioned, put on a note or stickers, or would want, and this is usually fine. If anyone objects a judge may have the Will followed but later people can voluntarily retransfer items. This book also covers how Tangible Personal Property Lists can gift things.

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

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

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

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

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

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

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

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

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

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

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

Laws in most states say a person dying within 120 hours of someone is seen as having died earlier, so often a Will gift to them is ignored. This avoids legal problems like need to know exact time of death and, also, having an item go through many probate legal cases over years.

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

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

Most Wills by their end have a Residue Clause to gift any property or money not gifted earlier in a Will or used in other ways. Things transferred this way is called the “Residue”. Many people gift most their money and property this way by intentionally not mentioning in a Will most things so the Residue Clause handles it. This avoids need to describe things and has less legal risk. After applying a Residue Clause if anything is somehow left then by law a decedent’s closest heirs-at-law get things (this is their closest family).

### USUAL RESIDUE CLAUSE HAS 2 PARTS

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

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

### EXAMPLE OF 2 PART RESIDUE CLAUSE:

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

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.

### SOME PEOPLE USE PERCENTAGES TO GIFT DIFFERENT AMOUNTS OF RESIDUE

Some people use percentages in a Residue Clause to get the exact split wanted. This can gift a lot (like to a person’s children) and gift a small bit (like to a grandchild or more distant people). *See example in Appendix.*

### SOME PEOPLE WRITE THE SAME THING IN BOTH PARTS OR SKIP A PART

Some people put the same names in both clause spaces or skip part of it to do certain things. For example, a person with no spouse may skip the 1st part and in 2nd part name their children (including any who died who had kids of their own) to be more sure all branches of their family get a share. *See example in Appendix.*

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

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

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



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

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

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

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

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

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

The easier and legally safer way to gift real property (real estate) at death is: 1) do nothing specific so it is handled by a Will Residue Clause, or 2) have a land broker or lawyer put names in a deed or similar document so the named persons will get the real property at someone else's death.

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

It is possible to gift real property at a particular address with very plain words, like a house, fixtures, and land can be fully given by something like: "I give 21 Main Street, Aberdeen, South Dakota to Mary Ellen Brown".

People can do a blanket gift giving all of a kind of property, like, "I give all real property and fixtures in Brown County, South Dakota to Ann Sue Hill" or "I give all real property and fixtures in any place to Paul Ian Rex".

Giving real property in a Will using a "legal description" is how many lawyers do it, but this can be hard to do. If using a legal description people must copy without mistakes the full legal description of maybe many lines into a Will with no abbreviation at all. A legal description might be found on a deed or on mortgage papers. Legal descriptions may refer to a "lot" or "blocks" 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.

## **CAN LEAVE SOME WILL GIFT LINES BLANK OR WRITE THING 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.

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

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

### **INTESTATE LAW CONTROLS THINGS NOT COVERED BY A WILL**

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

State “intestate law” found in South Dakota Codified Laws § 29A-2-102 and § 29A-2-103 says where property and money goes if a person dies with no valid Will or if anything is left after a Will is followed. In the rare cases intestate law applies it mostly says a decedent’s money and property goes in order to 1) any surviving spouse, 2) any surviving children of decedent (in some cases they split stuff with a spouse), 3) decedent’s surviving parents if either one is alive, 4) any surviving brothers and sisters of decedent, 5) more distant surviving family of decedent, and 6) to the state of South Dakota. Note, if any children of a decedent have died their children sometimes legally can get their share in their place.

## **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 the spouse, and then names a few fallback persons in the Residue Clause.

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

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

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

# CHAPTER 5

## DEBT, HOMESTEAD, MARRIAGE, AND CHILD ISSUES

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

This chapter covers debt, homestead, marriage, and child issues which some people can skip.

### DEBT ISSUES

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

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

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

Most states have "family rights" a decedent's surviving spouse can claim, or if there is no surviving spouse then decedent's children can claim, and this may let them get some things before most of decedent's debts are paid and even before Will and other transfers occur. South Dakota partly has these family rights. First, a surviving spouse or children can use the "Exempt Property" right to get most of decedent's clothes, books and papers, certain child support and alimony moneys, and \$7,000 of decedent's other property. Second, a surviving spouse or minor children can use the "Family Allowance" right to get money during legal proceedings, and often family get paid \$18,000 of decedent's money or property or can get a monthly amount. Third, as the next page says, a spouse or children can use the "Homestead" right to stay in the family home. Fourth, as later explained, a spouse often can get an "Elective Share" of up to 50% of decedent's things. Obviously if a spouse or children use these rights this leaves less property and money of the decedent to carry out Will gifts or other transfers so may interfere with these. So that family don't bother to use family rights usually people give mostly to any spouse or young children (like over 50% and any family house).

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

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

## HOMESTEAD ISSUES

### “HOMESTEAD” AND OTHER LAWS MAY HELP A SPOUSE OR YOUNG CHILDREN

A house and nearby land a person owns and lives at is often called a “homestead”. Basically, like many states South Dakota has a “homestead law” and other laws so a person usually may not give or sell or Will away a homestead they own unless any spouse they have also signs to consent to this. Also, usually a spouse during their life or the decedent’s children till age 18 have a right to stay in decedent’s homestead, and this applies even if a decedent by Will or other way says it should go to someone else. The law also says a homestead occupied by a spouse or any person over age 69 is safe from tax collectors and most creditors with no mortgage unless equity is over \$170,000. Clearly if family use the homestead laws and other related laws this may block or delay someone else other than them getting or using decedent’s homestead. For many reasons usually a person gives a family house by Will or other way to any spouse or small children.

## MARRIAGE ISSUES

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

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

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

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

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

A spouse if unhappy with what a Will and other transfers may give them has a right to instead choose (elect) an “Elective Share” of a dead spouse’s property and money rather than take what a Will says they get. Most states do this for a spouse for fairness, so a spouse has resources to live on, and so early divorce isn’t the only way to be financially secure. The Elective Share starts at 3% of decedent’s property and money after 1 year of marriage and increases 3% with each year of marriage till reaching 50% at 15 years. There is a \$50,000 minimum to help if a decedent left little of value. To avoid legal tricks the Elective Share can covers things a decedent gave away recently, things they controlled but didn’t own, and certain other special things. Clearly a spouse using the Elective Share to get half or so of a decedent’s things may use up much of what decedent had and interfere with other transfers. To avoid a spouse wanting to use the Elective Share most people give over 1/2 their things to any spouse (including any family house).

## CHILD ISSUES

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

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

### WILL CAN NAME “CONSERVATOR” TO HANDLE CHILD'S PROPERTY

Since a child until age 18 can't legally manage money or property a Will often names a person to act as “Conservator” to manage the child's property and money (some call this person the “Guardian of the Estate”). They decide each year how to use this property and money for a child's costs (like school, living, and health care) till usually age 18 when all left goes to a child. Judges often hold a yearly hearing to review spending. Those paying things for a child (including the Conservator) can ask to be paid back from a child's money and property. And as a nice 2nd option most Wills also say an Executor may let a “Custodian” they pick manage a young child's property or money just like a Conservator does. This is allowed by the “Uniform Transfers To Minors Act” law which lets a Custodian do things with less work, costs, and delays than usual.

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

This book's Will forms and most people name the same 1 person to be Guardian of the Person caring for a child and also be Conservator caring for a child's money and property. But people can change a Will to name different people for the 2 positions. However naming different people is rarely worth it since parents dying is rare, rarely do children get much, a person smart enough to handle a child usually can handle money, and naming different people can lead to arguments and lawsuits over spending.

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

A person to be a Guardian or Conservator must be 18 or older. They must not have a bad criminal record like a felony unless a judge agrees they can serve anyway. They need not reside in the state but being local can make work easier. The choice for Guardian and Conservator of the last living parent is usually followed. If no Will names a person for a position or they're unavailable a judge can pick someone, but family may argue about who to suggest. Naming 2 people for 1 position to act at the same time is rare since 2 persons may argue and any 1 person picked should be smart enough to act alone. It is somewhat common for 2 people who are a married couple to be named for a position, but there can still be problems if they disagree on what to do or if they divorce. Some Wills add a 2nd person to serve if the 1st person is unavailable, like: “or if they are later reasonably unable to serve I name \_\_\_\_\_ to serve”). But most people skip naming a fallback person since it's rarely needed, if a problem is seen a Will can be redone, and a judge always can pick someone.

### NAMING GUARDIANS RARELY MATTERS DESPITE PARENT'S 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

### BASIC IDEAS HELP PEOPLE UNDERSTAND CONTROLLING HEALTH CARE

Some ideas help people understand health care forms.

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

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

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

■ In legal documents a person can be named to have control of health care if needed. This person is often called the “Health Care Agent” or similar.

■ In legal documents people can give written medical instructions that doctors, family, and Agent must obey.

■ Parents even without legal documents usually have power over health care of children under age 18.

■ Some married people do documents to give a spouse power over medical care if they are incapacitated. Some adults give this power to parents. Young people are rarely badly sick so often skip doing these things.

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

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

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

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

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

-- a few people do a serious document to say starting immediately to not try most medical care (sometimes this is called a “Do-Not-Resuscitate” if about resuscitation or called a “Physician’s Order” if about many treatments).

# **CHAPTER 7**

## **FORM 1: WILL (STANDARD)**

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

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

### **FORM IS A WILL WITH SEVERAL PARTS**

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

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

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

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

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

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

Last is a paragraph for Testator to date and sign and print their name and address, and a paragraph for 2 witnesses to sign and print their name and addresses. This part uses phrases like “In witness whereof”, “publish”, “seal”, and “declare” which a person need not understand except to understand this means the Testator is indicating this is their Will which they intend to do and they want followed.

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

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

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

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

### **TESTATOR AND 2 WITNESSES WHILE TOGETHER SIGN WILL**

This Will after being filled out (except bits intentionally left blank) must be signed by the person doing the Will (the “Testator”) in front of 2 persons acting as witnesses at least age 18 who then also sign the Will. Testator and witnesses should be in 1 room and see all others sign. Though not required often a Testator says something like: “My name is \_\_\_\_\_ and this is my Will that I do voluntarily and want you 2 people to witness”. Once completed a Will usually should be kept so it can be found quickly within weeks of a death.

# LAST WILL AND TESTAMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

The facts support and Testator wants South Dakota law to apply to this Will.

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

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

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

A gift of property no longer owned by me at death shall lapse and be of no effect including no payment of money shall be done in its place.

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

I am intentionally not providing by Will or other ways for some family, such as some of my children and grandchildren, and this is intentional and not a mistake to be fixed.

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 an advancement.

Unless another meaning is shown use of plural includes the singular and vice versa, “they” can mean 1 person, and masculine, feminine, and neuter words are interchangeable.

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

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

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

A Personal Representative paying costs or expenses of my estate should be repaid these.

Any Personal Representative has sole discretion how to divide a gift to several persons, how to carry out a general gift, and how to do a gift to multiple persons.

No lawyer hired by a Personal Representative should get a standard fee or percentage.

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

If context permits the terms Personal Representative and Executor and Administrator are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and Custodian are interchangeable, and residue and residuary are interchangeable.

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

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

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having died before me.

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

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the South Dakota Uniform Transfers to Minors Act or a similar law anywhere, and they may pick the Custodian including themselves.

### **TESTATOR**

IN WITNESS WHEREOF, I, the Testator, publish, declare, seal, and sign this instrument as my Will willingly in the presence of each of the undersigned witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

### **WITNESSES**

The foregoing instrument was signed by the Testator in our presence and declared by them to be the Testator's Will, and we the persons signing below and named as Witnesses, sign our names hereunto acting as witnesses at the request and in the presence of the Testator, and in the presence of each other on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

\_\_\_\_\_  
Name and Residence of Witness (printed)

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

\_\_\_\_\_  
Name and Residence of Witness (printed)

# CHAPTER 8

## FORM 2: WILL (GUARDIAN)

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

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

### FORM IS A WILL WITH SEVERAL PARTS

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

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

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

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

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

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

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

Last is a paragraph for Testator to date and sign and print their name and address, and a paragraph for 2 witnesses to sign and print their name and addresses. This part uses phrases like "In witness whereof", "publish", "seal", and "declare" which a person need not understand except to understand this means the Testator is indicating this is their Will which they intend to do and they want followed.

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

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

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

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

### TESTATOR AND 2 WITNESSES WHILE TOGETHER SIGN WILL

This Will after being filled out (except bits intentionally left blank) must be signed by the person doing the Will (the "Testator") in front of 2 persons acting as witnesses at least age 18 who then also sign the Will. Testator and witnesses should be in 1 room and see all others sign. Though not required often a Testator says something like: "My name is \_\_\_\_\_ and this is my Will that I do voluntarily and want you 2 people to witness". Once completed a Will usually should be kept so it can be found quickly within weeks of a death.

# LAST WILL AND TESTAMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The facts support and Testator wants South Dakota law to apply to this Will.

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

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

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

A gift of property no longer owned by me at death shall lapse and be of no effect including no payment of money shall be done in its place.

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

I am intentionally not providing by Will or other ways for some family, such as some of my children and grandchildren, and this is intentional and not a mistake to be fixed.

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 an advancement.

Unless another meaning is shown use of plural includes the singular and vice versa, “they” can mean 1 person, and masculine, feminine, and neuter words are interchangeable.

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

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

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

A Personal Representative paying costs or expenses of my estate should be repaid these.

Any Personal Representative has sole discretion how to divide a gift to several persons, how to carry out a general gift, and how to do a gift to multiple persons.

No lawyer hired by a Personal Representative should get a standard fee or percentage.

Any Conservator, Custodian, or similar person managing a minor’s property or money

may use or invade the principal, sell property, and do any other action without court action.

If context permits the terms Personal Representative and Executor and Administrator are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and Custodian are interchangeable, and residue and residuary are interchangeable.

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

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

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having died before me.

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

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the South Dakota Uniform Transfers to Minors Act or a similar law anywhere, and they may pick the Custodian including themselves.

### **TESTATOR**

IN WITNESS WHEREOF, I, the Testator, publish, declare, seal, and sign this instrument as my Will willingly in the presence of each of the undersigned witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

### **WITNESSES**

The foregoing instrument was signed by the Testator in our presence and declared by them to be the Testator's Will, and we the persons signing below and named as Witnesses, sign our names hereunto acting as witnesses at the request and in the presence of the Testator, and in the presence of each other on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

\_\_\_\_\_  
Name and Residence of Witness (printed)

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

\_\_\_\_\_  
Name and Residence of Witness (printed)

## **CHAPTER 9**

### **FORM 3: 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 people 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. This book's form is the statutory form found in law at South Dakota Codified Laws § 29A-2-504.

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

This form helps when trying to use a Will after a death to prove it was properly signed. If a Self-Proving Affidavit form isn't done more work may be needed later, like later the witnesses to the Will signing must testify or submit a writing about this (if these people aren't available usually other proof can be provided). Also if this form isn't done there is slightly more risk a Will is not followed later by a judge and others. 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 work of people who are probably happy to do work to get things using a Will. Some states have no Self-Proving Affidavit for Wills and manage fine.

#### **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 form signed by the Testator and the 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. This form may not be done before a Will is done. Any notary will know how to fill out and sign the Self-Proving Affidavit. The Self-Proving Affidavit is then usually stapled or paper-clipped to the Will it supports.

# SELF-PROVING AFFIDAVIT

(South Dakota Codified Laws § 29A-2-504 )

**The State of South Dakota**

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

We, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, the Testator and the Witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testator signed and executed the instrument as the Will of the Testator and that the Testator had signed willingly, and that Testator executed it as Testator's free and voluntary act for the purposes therein expressed, and that each of the Witnesses, in the presence and hearing of the Testator, signed the Will acting as witness and that to the best of the Witness's knowledge the Testator was at that time 18 years of age or older, of sound mind, and under no constraint or undue influence.

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

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

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

**Notary or Officer:**

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

(Seal)

\_\_\_\_\_  
Signed

Official capacity of officer: \_\_\_\_\_



# CHAPTER 10

## FORM 4: TANGIBLE PERSONAL PROPERTY LIST

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

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

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

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

### FORM CAN ONLY GIFT "TANGIBLE PERSONAL PROPERTY"

By law the form can only gift tangible (touchable) things and not accounts or investments where ownership is tied to papers, accounts, or entities like a company. The form can only gift personal property so not real property (land or buildings), and also not coin or paper money even if they're old and collectible. Most lawyers recommend people do not use the form to gift any property used in a trade or business. Lists often are used to give clothes, furniture, vehicles, tools, electronics, appliances, antiques, jewelry, art, and similar property. Improper property written in a List is later just ignored.

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

#### **29A-2-513. Separate writing identifying devise of certain types of tangible personal property.**

[A] will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. [T]he writing must be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the dispositions made by the will.

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

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

## **TANGIBLE PERSONAL PROPERTY LIST**

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

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

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

### **PROPERTY ITEMS**

### **NAMES OF RECIPIENTS**

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

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

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

# CHAPTER 11

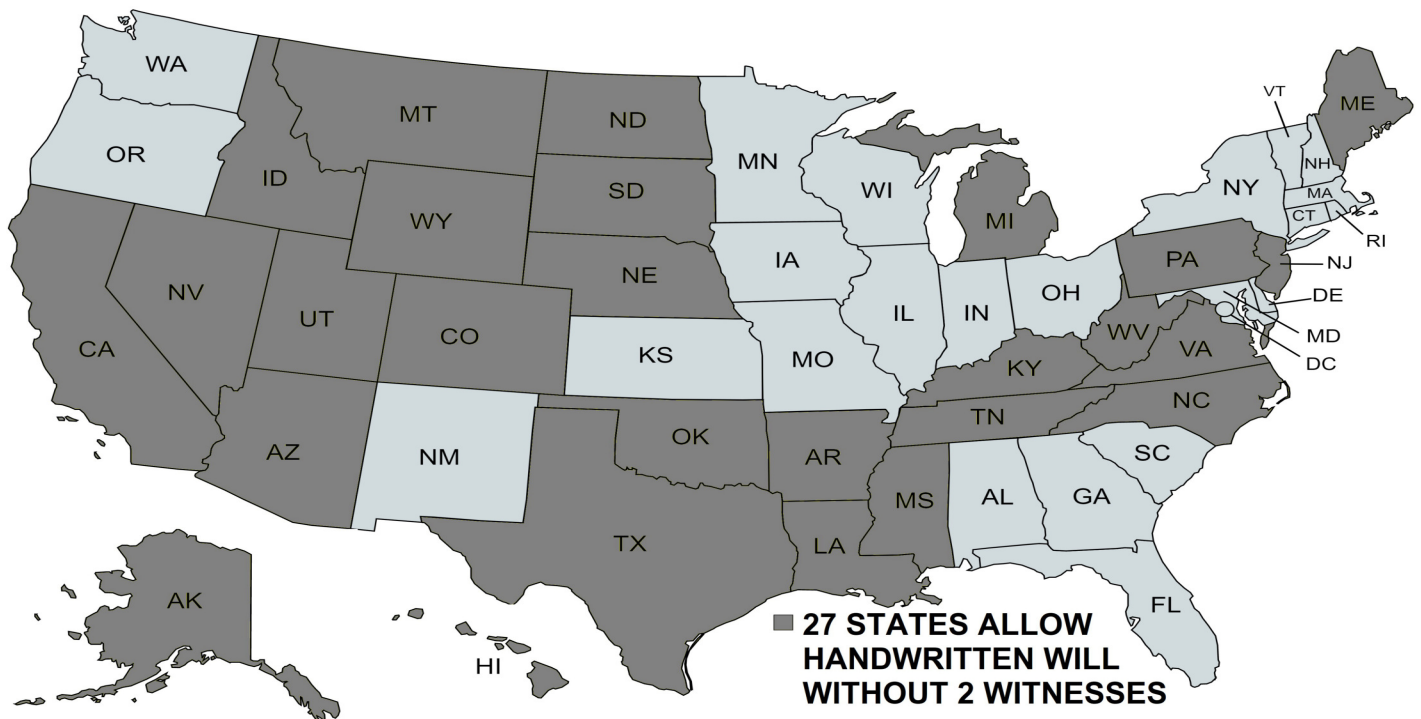
## FORM 5: HANDWRITTEN WILL

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

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

### HANDWRITTEN WILL WITHOUT WITNESSES IS ALLOWED IN SOUTH DAKOTA

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



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

Some lawyers warn against Handwritten Wills saying they often read confusingly, skip legal words that help in some cases, and are found invalid more often – but some studies show they are liked and usually fine. To use a Handwritten Will later after a death some people must in writing or in testimony say the handwriting looks like the Testator's, which can be a hassle. But a normal Will if no Self-Proving Affidavit was done also needs similar proof like from a witness to the signing or other proof of signing. Handwritten Wills tend to be done by people who are young so unlikely to need a Will soon, who are in a hurry, who want to fix a mistake, who before a trip want to pick a Guardian, who moved to a new state, or who plan to do a better Will later.

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

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

*"As my Will I give my estate and all else to Ann Baker who shall be Executor. - Dan Baker"*

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

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

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

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

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

This 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 David Smith and I live in Brown County, South Dakota.*

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

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

*My not giving to some other family of mine like some children and grandchildren is intentional and not a mistake for a court to later fix.*

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

*I request informal probate.*

4. *No bond or similar is needed of any Executor, Guardian, or Conservator.*

5. *For any minor child of mine I name Amy Sue Hill as Guardian to have care, custody, and control of them, and I also name this same person as Conservator for property, money, and estate of any minor child.*

*May 8, 2023      John David Smith*

## CHAPTER 12

# FORM 6: DURABLE POWER OF ATTORNEY FOR HEALTH CARE

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

This form lets a person name someone to control health care and give instructions in case this is needed. This book's form is similar to a form some lawyers in South Dakota use, and is actually copied from the form that some people years ago suggested be made as the standard form for the state.

### FORM CAN NAME AGENT FOR HEALTH CARE

In the form a person can be named as Agent to control health care if later the person doing the form is incapacitated (like by inability to communicate, be conscious, or think rationally). This person is also often called the Attorney-In-Fact. Often named is a spouse, adult child, relative, or a friend. A second person can be named to serve if the first person doesn't serve but many people skip this because it is rarely needed. A person naming an Agent for health care can help avoid family or friends having to rush to a judge for power over health care if the person falls ill and incapacitated. The Agent for health care usually should not be a worker or owner at a place giving health care unless they are a relative of the person doing the form. In the form are some options to pick from. The form has room for instructions but most people skip this since they trust their family or Agent, and if instructions are unclear other parties may not obey the Agent. Importantly the form is "durable" which means it still is effective if the person is later is incapacitated, but all power of the form ends at the person's death.

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

The form must be signed in front of either a person who is a notary who then notarizes the form, or in front of 2 witnesses who then sign too. A person doing this form can't use as a witness anyone under 18, and usually should not use someone who is close family, involved in providing health care to them, or who is named as Agent for health care. Once it is filled out and signed the form usually is shown to all places that may give care to put in the person's medical file to follow. To cancel the form a person usually should tell all places shown the form that it is now canceled.

# DURABLE POWER OF ATTORNEY FOR HEALTH CARE

I, \_\_\_\_\_, as **Principal**, being an adult of sound mind, hereby appoint

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

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

as my **attorney-in-fact (agent)** to consent to, to reject, or to withdraw consent for medical procedures, treatment, or intervention.

In the event the person I appoint above is unable, unwilling, or unavailable to act as my health care agent, I appoint as my **successor agent**:

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

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

My agent (or any successor agent) may make any health care decision for me which I could make individually if I had decisional capacity (except for any limitations given below). Any such decision shall be made in accordance with accepted medical standards and my agent (or any successor agent) may not authorize the withholding or withdrawal of comfort care from me.

My agent (or any successor agent) may authorize the withholding of life-sustaining treatment as set forth in my living will or advance directive (except for any limitations given therein) if I have executed one.

## IF I CAN'T COMMUNICATE AND AM TERMINAL OR PERMANENTLY UNCONSCIOUS

In the event I am unable to communicate verbally or nonverbally, demonstrate no purposeful movement or motor ability, and am unable to interact purposefully with environmental stimulation and (1) I have an incurable and irreversible condition such that, in accordance with accepted medical standards, death is imminent if life-sustaining treatment is not administered, or (2) I am in a coma or I have a condition of permanent unconsciousness that, in accordance with accepted medical standards, will last indefinitely without significant improvement:

*(Initial only one of the following three options and if you do not agree with either of the first two options, space is provided below for you to write your own instructions.)*

\_\_\_\_\_ I **do** authorize my agent (or any successor agent) to direct the withholding of artificial nutrition or hydration from me.

\_\_\_\_\_ I **do not** authorize my agent (or any successor agent) to direct the withholding of artificial nutrition or hydration from me.

\_\_\_\_\_ I authorize the following: \_\_\_\_\_

---

---

---

---

---

This durable power of attorney for health care is effective only during a period in which my physician has determined in good faith that I do not have decisional capacity.

Whenever making any health care decision for me, my agent (or any successor agent) shall consider the recommendation of my attending physician, the decision I would have made if I then had decisional capacity (if known) and the decision that would be in my best interests.

I give the following instructions to help guide my agent (or any successor agent): *(You may write additional instructions or limitations below.):* \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ Signature of Principal: \_\_\_\_\_

Principal's Printed Name: \_\_\_\_\_

Principal's Address: \_\_\_\_\_

**( This document can be completed with a notary or, alternatively, with 2 witnesses )**

**Notarization**

On this the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, the Principal, \_\_\_\_\_, personally appeared before the undersigned officer and signed the foregoing document in my presence.

[SEAL, IF ANY]

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

**OR**

**Statements of Two Witnesses**

FIRST WITNESS: The principal voluntarily signed this document in my presence.

Witness Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

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

SECOND WITNESS: The principal voluntarily signed this document in my presence.

Witness Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

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

**NOTICE TO PERSON MAKING A DURABLE POWER OF ATTORNEY  
FOR HEALTH CARE**

This is an important legal document. Prepare this durable power of attorney for health care carefully. If you use this form, read it completely. You may want to seek professional help to make sure the form does what you intend and is completed without mistakes.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapable. A revocation is effective when it is communicated to your attending physician or other health care provider.

## **CHAPTER 13**

### **FORM 7: LIVING WILL DECLARATION**

#### **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 most health care if later doctors think more health care almost certainly won't help an incapacitated person. This book's form is a statutory form found in state law at South Dakota Codified Laws § 34-12D-3.

#### **CAN STAY STOP MOST CARE IF LATER DOCTORS SAY IT LIKELY WON'T HELP**

This form can do the serious act of saying stop most health care if later doctors think more health care almost certainly won't help an incapacitated person. This form is rarely done since these kinds of health situations often don't occur, it can be stressful to decide this issue, and many people trust their family or Agent for health care to if needed consider all factors and wisely decide when to stop care.

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

The form must be signed in front of either a person who is a notary who then notarizes the form, or in front of 2 witnesses who then sign too. A person doing this form can't use as a witness anyone under 18, and usually should not use someone who is close family, involved in providing health care to them, or who is named as Agent for health care. Once it is filled out and signed the form usually is shown to all places that may give care to put in the person's medical file to follow. To cancel the form a person usually should tell all places shown the form that it is now canceled.



# LIVING WILL DECLARATION

( South Dakota Codified Laws § 34-12D-3 )

This is an important legal document. A living will directs the medical treatment you are to receive in the event you are in a terminal condition and are unable to participate in your own medical decisions. This living will may state what kind of treatment you want or do not want to receive.

Prepare this living will carefully. If you use this form, read it completely. You may want to seek professional help to make sure the form does what you intend and is completed without mistakes.

This living will remains valid and in effect until and unless you revoke it. Review this living will periodically to make sure it continues to reflect your wishes. You may amend or revoke this living will at any time by notifying your physician and other health care providers. You should give copies of this living will to your family, your physician, and your health care facility. This form is entirely optional.

**If you use this form, note that the form provides signature lines for you, the 2 witnesses whom you have selected, and a notary public (either 2 witnesses or alternatively a notary may be used).**

## TO MY FAMILY, HEALTH CARE PROVIDER, AND OTHERS CONCERNED WITH MY CARE:

I, \_\_\_\_\_ who was born on \_\_\_\_\_  
direct you to follow my wishes for care if I am in a terminal condition, my death is imminent, and I am unable to communicate my decisions about my medical care.

## **LIFE-SUSTAINING TREATMENT:** With respect to any life-sustaining treatment, I direct the following:

(Initial only one of the following options. If you do not agree with either of the following options, space is provided below for you to write your own instructions.)

\_\_\_\_\_ If my death is imminent or I am permanently unconscious, I choose not to prolong my life. If life sustaining treatment has been started, stop it, but keep me comfortable and control my pain.

\_\_\_\_\_ Even if my death is imminent or I am permanently unconscious, I choose to prolong my life.

\_\_\_\_\_ I choose neither of the above options, and here (below or attached) are my instructions should I become terminally ill and my death is imminent or I am permanently unconscious: \_\_\_\_\_  
\_\_\_\_\_

## **ARTIFICIAL NUTRITION AND HYDRATION:** food and water provided by means of a tube inserted into the stomach or intestine or needle into a vein.

With respect to artificial nutrition and hydration, I direct the following (initial only one):

\_\_\_\_\_ If my death is imminent or I am permanently unconscious, I do not want artificial nutrition and hydration. If it has been started, stop it.

\_\_\_\_\_ Even if my death is imminent or I am permanently unconscious, I want artificial nutrition and hydration.

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

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

## **WITNESSES:** The declarant voluntarily signed this document in my presence.

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

Address \_\_\_\_\_

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

Address \_\_\_\_\_

**NOTARY:** Today the declarant, \_\_\_\_\_, and witnesses \_\_\_\_\_,  
and \_\_\_\_\_ personally appeared before the undersigned officer and signed the foregoing instrument in my presence. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

# CHAPTER 14

## FORM 8: MEDICAL ORDERS FOR SCOPE OF TREATMENT

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

The Medical Orders For Scope Of Treatment form, often called the “MOST” form, lets a person say starting immediately do not try any of the health care a person can select in the form such as C.P.R. This book’s form is a standard form issued by the state. The form is short and can be read fast (like by paramedics) and is often used outside a hospital or other facilities, but it can be used inside these places too. Note, this MOST form has mostly replaced the older “Do-Not-Resuscitate form” which is similar but only covers resuscitation. Most other states have a similar form which is usually called the POLST form.

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

In the form a person can say starting immediately certain medical care shouldn’t be tried at all if they are later incapacitated and health personnel are deciding what care to give. A doctor or similar person must co-sign the form and think it is proper. The main thing the form does is say don’t try “resuscitation” to restart or help the heart or breathing, and this includes related things like not trying cardio-pulmonary resuscitation (C.P.R.), electric shocks to the heart, forced intubation, and machines to help breathing. There are other treatment options a person can say in the form to not try, like IV fluids by needle, artificial feeding by tube, and antibiotics. A person with capacity still thinking OK can override the form by verbally requesting care or just not showing the form to paramedics. Note, if a person falls ill even if they have done this form they are still usually taken to get pain relief and other comfort care. But this form is rarely done since these kinds of health situations often don’t occur, it can be stressful to decide this issue, and many people trust family or Agent for health care to consider all factors and wisely decide when to stop care.

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

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

**MEDICAL ORDERS FOR SCOPE OF TREATMENT**

**SOUTH DAKOTA MOST**

**FIRST** follow these orders, **THEN** contact medical provider. This is a Medical Order Sheet based on the patient's current medical condition and wishes. Any section that does not include an indication of the patient's or authorized representative's preference, is a directive to health care providers to use all necessary and appropriate medical interventions. The South Dakota MOST complements an advance health care directive and is not intended to replace that document.

Does patient have an advance health care directive? Yes ☐ No ☐

**PATIENT'S DIAGNOSIS OF TERMINAL CONDITION:**

**GOALS OF CARE:**

LAST NAME \_\_\_\_\_  
 FIRST NAME \_\_\_\_\_  
 MIDDLE INITIAL \_\_\_\_\_  
 DATE OF BIRTH \_\_\_\_\_  
 (mm/dd/yyyy)

<b>Check One</b>	<b>A. CARDIOPULMONARY RESUSCITATION (CPR): <u>PATIENT HAS NO PULSE AND IS NOT BREATHING</u></b> <input type="checkbox"/> CPR/Attempt Resuscitation (requires full intervention in section B) <input type="checkbox"/> DNR/Do Not Attempt Resuscitation (Allow Natural Death) When not in cardiopulmonary arrest, follow orders in B and C																	
<b>Check One</b>	<b>B. MEDICAL INTERVENTIONS: <u>PATIENT HAS PULSE AND IS BREATHING, OR HAS PULSE AND IS NOT BREATHING.</u></b> <input type="checkbox"/> <u>Full Intervention:</u> Treatment Goal: Full intervention including life support measures in the intensive care unit. In addition to treatment described in Comfort Measures and Selective Treatment below, use intubation, advanced airway interventions, and mechanical ventilation as indicated. Transfer to hospital and/or intensive care unit if indicated to meet medical needs. <input type="checkbox"/> <u>Selective Treatment:</u> Treatment Goal: Stabilization of medical condition. In addition to treatment described in Comfort Measures below, use medical treatment, IV fluids (hydration) and cardiac monitor as indicated to stabilize medical condition. May use basic airway management techniques and non-invasive positive-airway pressure. Do not intubate. Transfer to hospital if indicated to manage medical needs or comfort. Avoid intensive care if possible. <input type="checkbox"/> <u>Comfort Measures Only (Allow Natural Death):</u> Treatment Goal: Maximize comfort through symptom management. Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Patient prefers no transfer to hospital for life-sustaining treatments. Transfer to hospital only if comfort needs cannot be met in current location. <b>ADDITIONAL ORDERS:</b> (e.g. dialysis, etc.) _____ _____ _____																	
<b>Check One in Each Column</b>	<b>C. ARTIFICIALLY ADMINISTERED NUTRITION AND HYDRATION:</b> <u>ALWAYS OFFER FOOD AND FLUIDS BY MOUTH AS TOLERATED.</u> <u>Based on the Provider's medical judgment:</u> <table style="width:100%; border: none;"> <thead> <tr> <th style="width:80%;"></th> <th style="width:10%; text-align: center;">YES</th> <th style="width:10%; text-align: center;">NO</th> </tr> </thead> <tbody> <tr> <td>1. Will artificially administered nutrition and hydration be unable to prolong life?</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>2. Will artificially administered nutrition and hydration be more burdensome than beneficial?</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>3. Will artificially administered nutrition and hydration cause significant physical discomfort?</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>4. Has patient previously expressed a desire to forgo artificially administered nutrition and hydration by tube?</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table> <p>In order for artificially administered nutrition and hydration to be withheld, there must be a "YES" answer to one or more of questions 1-4 above.</p>				YES	NO	1. Will artificially administered nutrition and hydration be unable to prolong life?	<input type="checkbox"/>	<input type="checkbox"/>	2. Will artificially administered nutrition and hydration be more burdensome than beneficial?	<input type="checkbox"/>	<input type="checkbox"/>	3. Will artificially administered nutrition and hydration cause significant physical discomfort?	<input type="checkbox"/>	<input type="checkbox"/>	4. Has patient previously expressed a desire to forgo artificially administered nutrition and hydration by tube?	<input type="checkbox"/>	<input type="checkbox"/>
	YES	NO																
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4. Has patient previously expressed a desire to forgo artificially administered nutrition and hydration by tube?	<input type="checkbox"/>	<input type="checkbox"/>																
<b>Check One</b>	<b>D. INFORMED CONSENT DISCUSSION:</b> _____ had an informed consent discussion with patient or authorized representative. Name of Medical Provider (MD, DO, NP or PA)  <b>DISCUSSED WITH:</b> <input type="checkbox"/> Patient <input type="checkbox"/> Authorized Representative _____ <span style="margin-left: 300px;">(Name of Representative)</span>																	
<b>Check All That Apply</b>	<b>The basis for these orders is:</b> <input type="checkbox"/> Patient's declaration (can be verbal or nonverbal). <input type="checkbox"/> Patient's Authorized Representative (patient without capacity). <input type="checkbox"/> Patient's Advance Directive (if indicated, patient has completed an additional document that provides guidance for treatment measures if he /she loses medical decision-making capacity). <input type="checkbox"/> Resuscitation would be medically non-beneficial. <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">                         This form is voluntary and the signatures below indicate that the medical orders are consistent with the patient's medical condition and treatment plan and are the known desires or in the best interests of the patient who is the subject of the document.                     </div>																	

PRINT MEDICAL PROVIDER NAME	MEDICAL PROVIDER SIGNATURE (MANDATORY)	MEDICAL PROVIDER PHONE	DATE (MANDATORY)
PRINT PATIENT OR REPRESENTATIVE NAME	PATIENT OR REPRESENTATIVE SIGNATURE (MANDATORY)	DATE (MANDATORY)	
REPRESENTATIVE RELATIONSHIP	REPRESENTATIVE ADDRESS	REPRESENTATIVE PHONE NUMBER	

## INFORMATION FOR HEALTH CARE PROVIDERS

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ DOB: \_\_\_\_/\_\_\_\_/\_\_\_\_

### COMPLETING SOUTH DAKOTA MOST

- a. Must be completed by a physician, nurse practitioner or physician assistant based on patient's preferences and/or best interests, and medical indications.
- b. **South Dakota MOST** must be signed and dated by a MD, DO, NP or PA to be valid.
- c. **South Dakota MOST** must be signed by the patient or the patient's authorized representative.
- d. Use of original form is strongly encouraged. Photocopies and faxes of signed and dated **South Dakota MOST** are legal and valid.

### USING SOUTH DAKOTA MOST (Additional information available at: [www.sdaho.org/MOST](http://www.sdaho.org/MOST))

1. Any section that does not include an indication of the patient's or authorized representative's preference, is a directive to health care providers to use all necessary and appropriate medical interventions.
2. Artificial nutrition and hydration is optional when it cannot reasonably be expected to prolong life, would be more burdensome than beneficial, would cause significant physical discomfort, or patient had previously expressed a personal desire to forgo artificial nutrition by tube.
3. The determination of burden refers to the provision of artificial nutrition or hydration itself and not the quality of continued life of the patient.
4. A patient with capacity may revoke the **South Dakota MOST** at any time and request alternate treatment. Additionally, an authorized representative may revoke the MOST only if the MOST was executed by the authorized representative.
5. If there is a conflict between the patient's MOST document and the patient's written directives in any previously executed and unrevoked durable power of attorney or living will, the health care provider will treat the patient in accordance with the instructions in the MOST.

**The duty of medicine is to care for patients even when they cannot be cured. Physicians, nurse practitioners and physician assistants, and their patients must evaluate the use of technology at their disposal based on available information. Judgments about the use of technology to maintain life must reflect the inherent dignity of the patient and the purpose of medical care. Everyone is to be treated with dignity and respect.**

### REVIEWING SOUTH DAKOTA MOST

It is recommended that this **South Dakota MOST** be reviewed periodically, such as when the patient is transferred from one care setting or care level to another, or there is a substantial change in the patient's health status. A patient may revoke a MOST at any time by:

- a. Destroying or defacing the MOST with the intent to revoke;
- b. A written revocation of the MOST, signed and dated by the patient; or
- c. An oral expression of the intent to revoke the MOST, in the presence of a witness 18 years of age or older who signs and dates in writing, confirming that such expression of intent was made.

NOTE: An authorized representative may not revoke a MOST unless the MOST was executed by the authorized representative. Any such revocation by the authorized representative must be in writing.

A revocation is effective upon communication to the health care provider. A health care provider who is informed of a revocation shall record the date and time of the notification of revocation in the patient's medical record.

A new **South Dakota MOST** form should be completed if the patient wishes to make any substantive change to treatment goal(s) (e.g. reversal of prior directive). When completing a new form, the old form must be properly voided and retained in the medical record. To void the **South Dakota MOST** form, draw line through sections A through D and write "VOID" in large letters. This must be signed and dated.

### REVIEW OF THIS SOUTH DAKOTA MOST FORM

REVIEW DATE AND TIME	REVIEWER	LOCATION OF REVIEW	REVIEW OUTCOME
			<input type="checkbox"/> No Change <input type="checkbox"/> Form Voided and New Form Completed
			<input type="checkbox"/> No Change <input type="checkbox"/> Form Voided and New Form Completed
			<input type="checkbox"/> No Change <input type="checkbox"/> Form Voided and New Form Completed

# CHAPTER 15

## FORM 9: STATUTORY FORM POWER OF ATTORNEY

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

This form lets a person share power with someone to do things with the person's property, money, and other things. Many people call this form a "Financial Power Of Attorney". This book's form is the statutory form found in law at SDCL § 59-12-41. The form includes helpful information at the start and at the end.

### FORM GIVES POWER TO LET SOMEONE DO THINGS

This form lets a person give power to do things with their money, property, records, and other things to someone trusted like a spouse, other family member, or a friend. The person giving power is usually called the "Principal". The person getting power is usually called the "Agent" (also called the "Attorney in Fact"). If a person is sick or busy this form can let someone help pay bills, use accounts, buy or sell items, borrow, hire workers, sign contracts, see records, and more. This form can avoid more serious legal options like a guardianship of an adult at court. A person who isn't incapacitated can overrule or fire their Agent anytime. Importantly the form is "durable" which means it still is effective if the person doing it later is incapacitated, but all power of the form ends at the person's death.

### IN FORM POWERS GIVEN ARE INITIALED AND INSTRUCTIONS CAN BE GIVEN

In the form a parent must initial to say which powers are given, or they can just initial the last item to give all the listed powers. Many people give broad power since if an Agent's power is not clear then a bank, school, or other parties may hesitate or refuse to obey their orders. But most people do not give the powers in the "Grant Of Specific Authority" part since these powers are less often needed and tend to be wrongly used more. Also in the form a person can give health care instructions, but many people skip this since they trust they named Agent and if instructions aren't very clear other parties may refuse to obey the Agent. In the form a person can say who'd they prefer as Guardian or Conservator if a judge ever finds this is needed, but many people do not bother to fill out this part.

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

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

### PERSON SIGNS FORM IN FRONT OF A NOTARY

A person must sign the form in front of a notary who then notarizes it. Once it is done some cautious people quickly show the form to banks and similar to explain they should follow it later. When an Agent signs anything it should be like, for example: "John Smith signing as Agent under a Power of Attorney for Ann Hill". To cancel the form people should tell the Agent and take back copies and maybe tell places shown the form. Some banks before acting may later ask the Agent to sign the form found in law at SDCL § 59-12-42.

# **SOUTH DAKOTA STATUTORY FORM POWER OF ATTORNEY**

## **IMPORTANT INFORMATION**

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in SDCL chapter 59-12.

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 co-agent in the Special Instructions. Co-agents are required to have a majority to act unless you include otherwise in the Special Instructions.

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

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

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

## **DESIGNATION OF AGENT**

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

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

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

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

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

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

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

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

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

## **GRANT OF GENERAL AUTHORITY**

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the SDCL chapter 59-12:

(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 (§ 59-12-26)

( \_\_\_\_\_ ) Tangible Personal Property (§ 59-12-27)

( \_\_\_\_\_ ) Stocks and Bonds (§ 59-12-28)

- ( ☐ ) Commodities and Options (§ 59-12-29)
- ( ☐ ) Banks and Other Financial Institutions (§ 59-12-30)
- ( ☐ ) Operation of Entity or Business (§ 59-12-31)
- ( ☐ ) Insurance and Annuities (§ 59-12-32)
- ( ☐ ) Estates, Trusts, and Other Beneficial Interests (§ 59-12-33)
- ( ☐ ) Claims and Litigation (§ 59-12-34)
- ( ☐ ) Personal and Family Maintenance (§ 59-12-35)
- ( ☐ ) Benefits from Governmental Programs or Civil or Military Service (§ 59-12-36)
- ( ☐ ) Retirement Plans (§ 59-12-37)
- ( ☐ ) Taxes (§ 59-12-38)
- ( ☐ ) **All Preceding Subjects** (§§ 59-12-26 through 59-12-38)

### **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 an inter vivos trust or amend, revoke, or terminate a trust
- ( ☐ ) Make a gift, subject to the limitations of § 59-12-39 and any special instructions in this power of attorney
- ( ☐ ) Create or change rights of survivorship
- ( ☐ ) Create or change a beneficiary designation
- ( ☐ ) Authorize another person to exercise authority given under this power of attorney
- ( ☐ ) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- ( ☐ ) Exercise fiduciary powers that the principal has authority to delegate
- ( ☐ ) Access the content of electronic communications
- ( ☐ ) Disclaim or refuse an interest in property, including a power of appointment

### **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**

(INITIAL if you wish agent to have authority immediately and also during your later incapacity.)

- ( ☐ ) This power of attorney is effective immediately and shall not be affected by disability of the principal.

(INITIAL if you wish the agent to only have authority upon your incapacity and not immediately.)

- ( ☐ ) My agent(s) shall only have the authority to act upon my later incapacity.

(INITIAL if you wish agent to have authority immediately but not during your later incapacity.)

- ( ☐ ) This power of attorney is effective immediately but shall terminate upon my later incapacity.

You may give additional special instructions on the following lines: \_\_\_\_\_

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

### EFFECTIVE DATE

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

### NOMINATION OF CONSERVATOR AND/OR GUARDIAN (OPTIONAL)

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

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

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

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

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

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

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

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

### RELIANCE ON THIS POWER OF ATTORNEY

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

### SIGNATURE AND ACKNOWLEDGMENT

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

\_\_\_\_\_  
Date

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

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

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

#### **Notary or Officer:**

State of South Dakota )  
County of \_\_\_\_\_ ) ss.

This Statutory Form Power of Attorney document was acknowledged before me on

\_\_\_\_\_ by \_\_\_\_\_.  
Date Name of Principal

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

(Seal)



## **IMPORTANT INFORMATION FOR AGENT**

### **Agent's Duties**

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

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney; and
- (4) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner: *(Principal's Name) by (Your Signature) as Agent under POA dated (Date)*

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 receipts, disbursements, and transactions made on principal's behalf;
- (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
- (6) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

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

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

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

### **Liability of Agent**

The meaning of the authority granted to you is defined in SDCL chapter 59-12. If you violate SDCL chapter 59-12 or act outside the authority granted, you may be liable for any damages caused by your violation.

In addition to civil liability, failure to comply with your duties and authority granted under this document could subject you to criminal prosecution for grand theft, embezzlement of property received in trust, among other criminal charges.

If the principal is 65 years of age or older, or an adult with a disability, you could also be prosecuted for elder abuse and financial exploitation.

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

# **CHAPTER 16**

## **FORM 10: POWER OF ATTORNEY OVER MINOR CHILD**

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

This form lets a parent (or guardian) of a child under age 18 share power over them with someone else. This book's form is similar to forms some lawyers in the state use, and is actually very similar to the form given out by the North Dakota Supreme Court. The state of South Dakota does not have a standard form for this area nor does a state law specifically address using this kind of form, but most lawyers, schools, and doctors probably will follow this kind of form. People who want can transfer more official power to someone using a Temporary Guardianship which can be obtained from a judge at court.

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

In the form a parent or guardian can share some power over a child under 18 with a person they name. The person getting power can be called the "Attorney-In-Fact" but the term "Agent" is mostly used now. Power over health care and school issues is normally given, but no power to agree to adoption or any permanent change for the child can be given. The person who did the form can usually fire the person they named or overrule any decision they dislike. Often receiving power is a relative, friend, or teacher helping watch a child or who is willing to do this if needed. This form is often used if a parent and child are apart for work, school, training, rehab, sports, prison, military, immigration, or long visits. The form is mostly not done for brief situations like daycare, babysitter, short visits, or most times a parent can come quickly. This form can avoid need for serious legal actions like foster care. This form is only effective for up to 6 months. People with many small children can modify the form to add room for them or can just do multiple forms.

### **FORM IS SIGNED BY PERSON WHILE USING A NOTARY**

The form must be signed by a parent or guardian in front of a person who is notary who then notarizes it. Some people change the form to add room for a 2nd parent to sign to make it likelier people like doctors, schools, and others trust the form. Once the form is signed some extra cautious people quickly show it to schools and doctors to help explain they should follow it later. Once signed usually a parent gives the form to the person getting power to use whenever it is needed. To later cancel the form a person should take back copies of the form and maybe tell any places that were shown the form it is now canceled.

# POWER OF ATTORNEY OVER MINOR CHILD

1. I am \_\_\_\_\_ (name), the ☐ parent ☐ legal guardian  
(check one) of the minor child:

\_\_\_\_\_ (name), born on \_\_\_\_\_ (DOB).

2. My address is \_\_\_\_\_ (street address).

3. I appoint the following person as my attorney-in-fact for the child named in paragraph 1.

Name \_\_\_\_\_

Address \_\_\_\_\_.

4. CHOOSE / CHECK ONLY ONE OF THE FOLLOWING:

☐ I delegate to my attorney-in-fact all power and authority that I have as a parent or guardian, **except** the power to consent to marriage or adoption. **OR**

☐ I delegate to my attorney-in-fact only the specific authority to: \_\_\_\_\_

5. This Power of Attorney lasts until \_\_\_\_\_ (date – must be within 6 months) or until the powers of the attorney in fact are revoked by me.

6. This Power of Attorney lasts even in the event of my disability or incapacity.

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

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

Phone Number: \_\_\_\_\_

**NOTARY:** Signed and sworn to before me on the date of \_\_\_\_\_, 20\_\_\_\_ by  
\_\_\_\_\_.

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

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

# **CHAPTER 17**

## **FORM 11: DESIGNATION TO CONTROL DISPOSITION OF REMAINS**

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

This form lets someone be named and instructions be given by a person to control their body after death (their “remains”) and related things like funeral, burial, cremation, ceremonies, and buying things for all this. This book’s form is basically the statutory form found in law at South Dakota Codified Laws § 34-26-77.

### **FORM CAN NAME PERSON TO CONTROL DEAD BODY AND RELATED ISSUES**

This form lets a person authorize someone as their Agent to control the person’s dead body and all related issues like funeral, burial, cremation, ceremonies, and buying goods and services for all this. If this form is not done under state law control of all this is by the closest family member (in order this means a spouse, adult children, parents, then siblings). People do this form rarely, mostly only if it seems family would do a bad job like they may be too upset while mourning, be bad with money, or do unwanted things. Payment for burial, cremation, ceremonies, and related things will come from pre-paid funeral accounts, insurance, and a dead person’s money and property, and family and a person’s Executor and family are legally required to arrange payment if the dead person left enough money and property so they can afford it.

### **FORM CAN GIVE INSTRUCTIONS THAT EVERYONE MUST FOLLOW**

The form also has an optional spot for directions like saying what funeral, burial, cremation, tombstone, ceremonies, songs, scriptures, pastors, food, and other things are wanted or already paid for. Or a person can attach pages of paper with these instructions. These instructions should be followed by everyone so long as the dead person’s estate can afford it. But many people skip giving any directions and instead they just trust the person they named in the form or their family to do what they mentioned they wanted. In recent years more and more people write they want “Direct Burial” or “Direct Cremation”, and this is an affordable option done fast in a few days and without family watching, and later family often hold an informal event (often called a “Celebration Dinner”) either without the body at all or when family later get the ashes or can visit the grave. About half of people now do cremation which is more affordable than burial.

### **PERSON SIGNS FORM IN FRONT OF A NOTARY**

A person should sign the form in front of a person who is a notary who then notarizes it. Once done the form can be given to someone to hold and use when needed, or it can be put in a place where it can be found quickly within just a few days of a death (like in a file cabinet, a safe, or desk drawer).

# DESIGNATION TO CONTROL DISPOSITION OF REMAINS

( South Dakota Codified Laws § 34-26-77 )

STATE OF SOUTH DAKOTA                    )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, do hereby designate \_\_\_\_\_  
with the right to control the disposition of my remains upon my death.

I \_\_\_\_\_ have / \_\_\_\_\_ have not (initial one option) attached specific directions concerning the disposition of my remains which the designee shall substantially comply with, provided such directions are lawful and there are sufficient resources in my estate to carry out the directions (see directions below or on other pages).

OPTIONAL: I direct that my body be disposed of in the following manner (you may include, or not, direction of any associated ceremonies or rites):

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**NOTARY OR OFFICER:** Subscribed and sworn to before me this \_\_\_\_\_ day of  
the month of \_\_\_\_\_ of the year \_\_\_\_\_.

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

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

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

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

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

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

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

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

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

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

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

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

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

SKIPPED

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

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

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

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

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

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

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

The facts support and Testator wants South Dakota law to apply to this Will.

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

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

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

A gift of property no longer owned by me 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 me their part to them lapses and instead goes to other surviving recipients.

I am intentionally not providing by Will or other ways for some family, such as some of my children and grandchildren, and this is intentional and not a mistake to be fixed.

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 an advancement.

Unless another meaning is shown use of plural includes the singular and vice versa, “they” can mean 1 person, and masculine, feminine, and neuter words are interchangeable.

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

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

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

A Personal Representative paying costs or expenses of my estate should be repaid these.

Any Personal Representative has sole discretion how to divide a gift to several persons, how to carry out a general gift, and how to do a gift to multiple persons.

No lawyer hired by a Personal Representative should get a standard fee or percentage.

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

If context permits the terms Personal Representative and Executor and Administrator are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and



Custodian are interchangeable, and residue and residuary are interchangeable.

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

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

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having died before me.

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

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the South Dakota Uniform Transfers to Minors Act or a similar law anywhere, and they may pick the Custodian including themselves.

### **TESTATOR**

IN WITNESS WHEREOF, I, the Testator, publish, declare, seal, and sign this instrument as my Will willingly in the presence of each of the undersigned witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, on the 22nd day of June, 2022.

*Paul Samuel Maxwell*

Testator

### **WITNESSES**

The foregoing instrument was signed by the Testator in our presence and declared by them to be the Testator's Will, and we the persons signing below and named as Witnesses, sign our names hereunto acting as witnesses at the request and in the presence of the Testator, and in the presence of each other on the 22nd day of June, 2022.

*Eve Mable Rogers*

Witness Signature

Eve Mable Rogers, 14 2nd St., Aberdeen, SD 57201

Name and Residence of Witness (printed)

*Mary Ann Moon*

Witness Signature

Mary Ann Moon, 35 Buffalo Road, Denver, Colorado 84001

Name and Residence of Witness (printed)

**Sample Filled Out Form: Last Will and Testament (Standard)**  
**with Many Specific Gifts and with Residue Clause Given By Percentages**

## LAST WILL AND TESTAMENT

I, Paul Brian Kent, of Minnehaha County, South Dakota, do revoke all prior Wills and testamentary documents and do make, publish, and declare this as my Will. I am of sound mind and under no duress or undue influence and acting voluntarily.

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

I give big oak table to Anne J. Smith .

I give \$5,000 and Ford Truck to Loretta Marsha Baxter .

I give 63 Wentworth Road, Aberdeen, South Dakota to Kenneth Alan Ford .

I give all real property and fixtures I own in Pennington County, South Dakota to Amy Marie Fox and Pamela Sue Fox .

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

I give Irish locket and Grandma Kay's wedding ring to Suzie Paulson .

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

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

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

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

I give \$1000 to each of my grandchildren so this will be about \$10,000 in total .

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

**3. RESIDUE.** I give the rest and residue and remainder of my estate, my property, and money of any kind and nature, and all I have (all of which is called the "residue"), as follows:

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

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

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

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

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

The facts support and Testator wants South Dakota law to apply to this Will.

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

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

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

A gift of property no longer owned by me 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 me their part to them lapses and instead goes to other surviving recipients.

I am intentionally not providing by Will or other ways for some family, such as some of my children and grandchildren, and this is intentional and not a mistake to be fixed.

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 an advancement.

Unless another meaning is shown use of plural includes the singular and vice versa, “they” can mean 1 person, and masculine, feminine, and neuter words are interchangeable.

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

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

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

A Personal Representative paying costs or expenses of my estate should be repaid these.

Any Personal Representative has sole discretion how to divide a gift to several persons, how to carry out a general gift, and how to do a gift to multiple persons.

No lawyer hired by a Personal Representative should get a standard fee or percentage.

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

If context permits the terms Personal Representative and Executor and Administrator are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and Custodian are interchangeable, and residue and residuary are interchangeable.

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

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

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having died before me.

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

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the South Dakota Uniform Transfers to Minors Act or a similar law anywhere, and they may pick the Custodian including themselves.

### **TESTATOR**

IN WITNESS WHEREOF, I, the Testator, publish, declare, seal, and sign this instrument as my Will willingly in the presence of each of the undersigned witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, on the 30th day of December, 2019.

*Paul Brian Kent*

Testator

### **WITNESSES**

The foregoing instrument was signed by the Testator in our presence and declared by them to be the Testator's Will, and we the persons signing below and named as Witnesses, sign our names hereunto acting as witnesses at the request and in the presence of the Testator, and in the presence of each other on the 30th day of December, 2019.

*Olivia Joy Pawlenty*

Witness Signature

Olivia Joy Pawlenty, 87 Forest Road, Pierre, South Dakota 57501  
Name and Residence of Witness (printed)

*Roy Felix Pawlenty*

Witness Signature

Roy Felix Pawlenty, 87 Forest Road, Pierre, South Dakota 57501  
Name and Residence of Witness (printed)

**Sample Filled Out Form: Last Will and Testament (Guardian)  
with Gifts Section Shortened, Guardian named, and  
Will modified to have a 1 Part Residue Clause**

## LAST WILL AND TESTAMENT

I, David Eric Smith, of Brookings County, South Dakota, do revoke all prior Wills and testamentary documents and do make, publish, and declare this as my Will. I am of sound mind and under no duress or undue influence and acting voluntarily.

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

I give \$500 to each one of my brothers, sisters, and cousins which will be about \$30,000 in total.

I give \$4000 to Baker Food Shelf in Rapid City, South Dakota.

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

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

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

**5. GUARDIAN.** I hereby name Stephanie Ann Frankowski to be if needed the Guardian of any minor child of mine to have care, authority, control, custody, and other control of them (including as Guardian of the Person). I also name this same person to be if needed Conservator for any minor child of mine or other minor person to have care, control, and power over their property, money, and estate (including as Guardian of the Estate).

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

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

The facts support and Testator wants South Dakota law to apply to this Will.

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

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

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

A gift of property no longer owned by me 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 me their part to them lapses and instead goes to other surviving recipients.

I am intentionally not providing by Will or other ways for some family, such as some of my children and grandchildren, and this is intentional and not a mistake to be fixed.

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 an advancement.

Unless another meaning is shown use of plural includes the singular and vice versa, “they” can mean 1 person, and masculine, feminine, and neuter words are interchangeable.

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

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

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

A Personal Representative paying costs or expenses of my estate should be repaid these.

Any Personal Representative has sole discretion how to divide a gift to several persons, how to carry out a general gift, and how to do a gift to multiple persons.

No lawyer hired by a Personal Representative should get a standard fee or percentage.

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

If context permits the terms Personal Representative and Executor and Administrator are interchangeable, Conservator and Guardian of the Estate and Guardian of Property and Custodian are interchangeable, and residue and residuary are interchangeable.

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

Any Personal Representative, Executor, Administrator, Guardian of any type like for

a person or estate, Conservator, Custodian, and any other fiduciary under this Will or otherwise shall qualify and serve without bond, surety, security, surety bond, or similar.

If evidence does not show it likely a person survived me by 120 hours (5 days) then for this Will and my estate they shall be deemed in all ways as having died before me.

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

Any Personal Representative may at any time transfer money or property of a minor under age 18 to a Custodian to serve under the South Dakota Uniform Transfers to Minors Act or a similar law anywhere, and they may pick the Custodian including themselves.

### **TESTATOR**

IN WITNESS WHEREOF, I, the Testator, publish, declare, seal, and sign this instrument as my Will willingly in the presence of each of the undersigned witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, on the 21st day of June, 2021,

*David Eric Smith*

Testator

### **WITNESSES**

The foregoing instrument was signed by the Testator in our presence and declared by them to be the Testator's Will, and we the persons signing below and named as Witnesses, sign our names hereunto acting as witnesses at the request and in the presence of the Testator, and in the presence of each other on the 21st day of June, 2021,

*John Elliot Potter*

Witness Signature

John Elliot Potter, 2 Spruce St, Sherwood, SD 57050

Name and Residence of Witness (printed)

*Ann Paula Blom*

Witness Signature

Ann Paula Blom, 70 Rocky Road, Clarksville, SD 57011

Name and Residence of Witness (printed)

Sample Filled Out Form: Self-Proving Affidavit

# SELF-PROVING AFFIDAVIT

(South Dakota Codified Laws § 29A-2-504 )

The State of South Dakota

County of Brookings

We, David Eric Smith , John Elliot Potter and Ann Paula Blom the Testator and the Witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testator signed and executed the instrument as the Will of the Testator and that the Testator had signed willingly, and that Testator executed it as Testator's free and voluntary act for the purposes therein expressed, and that each of the Witnesses, in the presence and hearing of the Testator, signed the Will acting as witness and that to the best of the Witness's knowledge the Testator was at that time 18 years of age or older, of sound mind, and under no constraint or undue influence.

David Eric Smith,  
Testator

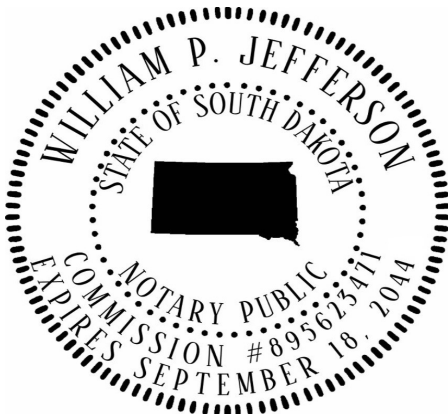
John Elliot Potter  
Witness

Ann Paula Blom  
Witness

Subscribed, sworn to and acknowledged before me by David Eric Smith the Testator, and subscribed and sworn to before me by John Elliot Potter and Ann Paula Blom Witnesses, this 21st day of June, 2021 .

(Seal)

William P. Jefferson  
Signed  
Official capacity of officer: \_\_\_\_\_





## Sample Filled Out Form: Tangible Personal Property List

### TANGIBLE PERSONAL PROPERTY LIST

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

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

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

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

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