

**DAVENPORT'S
NORTH DAKOTA WILLS
AND
ESTATE PLANNING
LEGAL FORMS**

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

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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 North 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 9 ready to use North 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 legal options can be used.

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

Form 3. 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 Directive – lets a person name someone as Agent to control health care if the person is later incapacitated and also give instructions on health care, and also can cover "Living Will" issues about stopping care if a person later has a terminal condition or is permanently unconscious.

Form 7. Physician Orders For Life Sustaining 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 8. General Durable 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 9. Power Of Attorney For Care And Custody Of 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.

NORTH DAKOTA LAW ON ESTATE PLANNING COVERS MOST PEOPLE HERE

This book is only for North 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 may be owed due to a death at the Federal level, and it only starts when a tax credit is used up covering \$13.61 million a person in the year 2024 and later.

North Dakota no longer has any state or local estate or inheritance taxes that may 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 North 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 after a death are usually tax free.

CHAPTER 2

TERMS, PROPERTY LAW, AND HELPFUL INFORMATION FORM

THERE ARE BASIC TERMS AND IDEAS IN ESTATE PLANNING

Some legal terms and ideas are basic to Estate Planning.

- “Estate Planning” is about people doing legal documents to control things if later absent, sick, or dead. After a document is done people are mostly free to sell or transfer property, instruct doctors, or change forms.
- A “person doing a legal document” and “doing a form” means the form is for and affects that person.
- 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 North 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 “North Dakota Century Code”. Code means laws are put together and then given numbers. A law is often called a “statute” or “section” shown by a “§” or “s” mark. A North Dakota law can be referred to in many ways, for example like “North Dakota Century Code § 30.1-08-01” or “N.D.C.C. § 30.1-08-01”. 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

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. An 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 be aware 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, car loans, and accounts payable:

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

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

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

CHAPTER 3

WILL BASICS

WILL LETS “TESTATOR” CONTROL THINGS AFTER DEATH

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

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 North Dakota usually must show it is a Will by its words, and the person doing it must sign it in front of 2 persons acting as witnesses who then sign too. A Will just spoken on a video or audio recording with no writing usually has no legal effect. Handwritten Wills are covered later in this book.

WITNESSES SHOULD AT LEAST AGE 18 AND USUALLY NOT GETTING GIFTS

A person to witness a Will must be at least age 18. It is slightly better but not required that witnesses not be 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 just some strangers. In North Dakota witnesses to a Will can be named in Will gifts, and this does not effect a Will or any gifts, but usually to avoid any issue or suspicion it is better if people not getting anything in a Will are witnesses.

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 people also print their names and put their addresses. 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 witnessed”. Some Testators chat a few minutes with witnesses to help show they are of sound mind.

USUALLY AT START OF WILL A PERSON NAMES ANY SPOUSE AND CHILDREN

Many Wills including legal forms in this book start with a place for a Testator to name any current living spouse and living children of theirs. Any natural or adopted child should be written here, and this includes illegitimate children a person is fairly sure of. A person without these people can skip this or just put “none”. Under North Dakota law not doing this may invalidate the Will by indicating a person lacks sufficient mental ability or memory, or may let a spouse or child not listed ask a judge to give them a share or all of the estate by claiming a Testator forget them. After listing a person a Testator doing a Will is free to give them nothing.

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.

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 “canceled” 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.

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. A few person during life deposit a Will at the local County Recorder for safekeeping though this is fairly rare.

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 North 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

North Dakota law says normally the Executor can ask can be paid a fair wage for the time they spend working on an estate. Pay for an Executor may helpfully let money get to this person even if a decedent left little of value and large creditors are asking to be paid. But some Testators don’t want such pay and add a Will line about this. 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, mortgage payments, repairs, utilities, funeral, attorneys, and probate costs and fees are paid for with money or property of the estate. 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.

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

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

CONDITIONS ON WILL GIFTS ARE RARE DUE TO POSSIBLE PROBLEMS

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

PEOPLE CAN ADD AN “ALTERNATE BENEFICIARY” LIKE FOR SPECIAL ITEMS

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

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

The same property or money in a “joint gift” can go to 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.

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

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

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

GIFT BENEFICIARIES CAN GET PERCENTAGE RATHER THAN EQUAL SHARE

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

AFTER A DEATH 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 often fine. If anyone objects a judge may have a Will and law be followed but later people can voluntarily retransfer items. Later this book covers gifting using Tangible Personal Property Lists.

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.

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

Most states and all this book's Will forms say a person must survive a Testator by 5 days (120 hours) to get things by Will or from an estate. Instead a person who dies within 5 days or simultaneously is seen legally as dying before a Testator. This skips need to prove when people died (like if people die in 1 accident within minutes), and avoids a Will gift or the right to this legally transferring to someone who then dies within days.

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

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

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

USUAL RESIDUE CLAUSE HAS 2 PARTS

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

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

EXAMPLE OF 2 PART RESIDUE CLAUSE:

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

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

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

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

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

Some people put the same 1 person in both parts of a 2 part Residue Clause to better ensure that 1 person or if they later die their descendants get things. Or a person with no spouse often skips and leaves blank the Residue Clause 1st part and in the 2nd part puts their children (including any who died who had a child), to make extra clear all family branches get an equal share. See Appendix. Many people use percentages in a Residue Clause, like to give a big percentage to their child and give a small percentage to a cousin or friend.

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 Cass County Library, ND", 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, Grand Forks, North Dakota to Mary Ann Brown".

People can do a blanket gift giving all of a kind of property, like, "I give all real property and fixtures in Brown County, North 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 starting at N.D.C.C. § 30.1-04-01 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 often says a decedent’s money and property goes in order to any surviving spouse of decedent, any surviving children of decedent (in some cases they split things with a spouse), any surviving parents of decedent, any surviving brothers and sisters of decedent, more distant family of decedent, and then the state of North Dakota. For exact specifics people can read the North Dakota law itself. Note, if children of a decedent have died their children (decedent’s grandchildren) often 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. North Dakota partly has these family rights. First, a surviving spouse or young children can use the "Exempt Property" right to get \$15,000 of household items, jewelry, and vehicles of decedent (and if these don't exist some money can come from accounts). Second, a surviving spouse or young children can use the "Family Allowance" right to get money to live on during probate, and often family can get from decedent's accounts an amount equal to decedent's salary. 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”. Like many states North 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 also signs to consent to this. Also, after a decedent’s death usually a spouse for their life or decedent’s children till age 18 have a right to stay in decedent’s homestead, and this will occur even if a decedent by Will or other way says it should go to someone else. N.D.C.C. § 30-16-02. A law also says a homestead occupied by family is free from actions of creditors like foreclosure unless equity is over \$150,000 or the creditor was given a mortgage. Clearly due to all this if family use the homestead law and other related laws this may block or delay someone else other than family getting 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

North 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 North 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. North Dakota law at N.D.C.C. § 30.1-05-01 sets the Elective Share at 50% of decedent’s money and property (or if decedent left little of value a spouse can claim the first \$75,000). 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

SOME BASIC IDEAS HELP PEOPLE UNDERSTAND HEALTH CARE FORMS

Some ideas help people understand health care forms.

■ By law people control their health care unless “incapacitated” by insufficient ability to a) communicate verbally or by notes, b) be rational, or c) be conscious. Unless incapacitated people just tell doctors what health care they want. In actuality most people keep control of health care till death or till no big treatment options remain, but people may worry they may be incapacitated a long time so do some health care forms. Forms about control of health care if people are later incapacitated are often called “Advanced Directives”.

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

■ In forms a person can be named to have control of health care if needed who is often called “Agent”.

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

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

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

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

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

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

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

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

-- a few people do a serious document to starting immediately block certain health care (and this often is called a “Do-Not-Resuscitate” if about resuscitation or called a “Physician’s Order” if about many treatments).

CHAPTER 7

FORM 1: WILL (STANDARD)

FORM 1 IS A STANDARD WILL THAT IS FLEXIBLE 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 child under the age of 18. The word "Testament" appears in a Will title since long ago this was a document often done with a Will.

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.

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

Paragraph 2, "Gifts", has many spaces to make either specific gifts of particular property or general gifts like of money. People can delete, copy and paste to add more, or leave blank these gift lines.

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

Paragraph 4, "Residue", has a Residue Clause to say property and money left after other Will parts and other transfers is to be distributed in the way a person wrote in the blank parts of this paragraph.

Paragraph 5, "Administration", 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).

Paragraph 6, "Miscellaneous", has paragraphs of legal language to help avoid certain legal issues.

Last is paragraphs for Testator to date, sign, and print their name, and for the 2 witnesses to sign, date, and print their name and addresses. This part has some legal phrases which people need not understand.

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

The Will after being filled out (except bits intentionally left blank) must be signed by the person doing the Will (called the "Testator") in front of 2 persons acting as witnesses at least age 18 who then also sign it. Testator and witnesses should be in 1 room and see all others sign.

LAST WILL AND TESTAMENT

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

_____.

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

I give _____ to _____.
I give _____ to _____.
I give _____ to _____.
I give _____ to _____.
I give _____ to _____.
I give _____ to _____.
I give _____ to _____.
I give _____ to _____.

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

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

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

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

5. ADMINISTRATION. I nominate and appoint _____
as Personal Representative including for me, my Will, and my estate.

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

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

The facts support and Testator wants North 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, including I am specifically not providing for children of a deceased child of mine.

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 recipient of property who later loses it or who pays to keep it may require others or the estate to pay or do exoneration.

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

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

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 should be paid based on a percentage of estate property or similar.

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, digital assets,

inheritances owed me, and all I had 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 North 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, sign my name to this instrument, and being first duly sworn do hereby declare to the undersigned authority that I sign and execute this instrument as my Will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes herein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence, and I do all this on the _____ day of _____, 20____.

Testator's Signature

Testator's Printed Name

WITNESSES

The foregoing Will was this _____ day of _____, 20____, signed, sealed, published, and declared by the Testator as Testator's Will in our presence, and we the Witnesses, at the Testator's request and in Testator's presence, and in the presence of each other, have hereunto subscribed our names acting as witnesses on the above date.

Witness Signature

Printed Name and Residence of Witness

Witness Signature

Printed Name and Residence of Witness

CHAPTER 8

FORM 2: WILL (GUARDIAN)

FORM 2 IS BASIC WILL WITH GUARDIAN CLAUSE FOR YOUNG CHILD

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

FORM IS A WILL WITH SEVERAL PARTS INCLUDING A GUARDIAN PART

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.

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

Paragraph 2, "Gifts", has many spaces to make either specific gifts of particular property or general gifts like of money. People can delete, copy and paste to add more, or leave blank these gift lines.

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

Paragraph 4, "Residue", has a Residue Clause to say property and money left after other Will parts and other transfers is to be distributed in the way a person wrote in the blank parts of this paragraph.

Paragraph 5, "Administration", 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).

Paragraph 6, "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.

Paragraph 7, "Miscellaneous", has paragraphs of legal language to help avoid certain legal issues.

Last is paragraphs for Testator to date, sign, and print their name, and for the 2 witnesses to sign, date, and print their name and addresses. This part has some legal phrases which people need not understand.

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

The Will after being filled out (except bits intentionally left blank) must be signed by the person doing the Will (called the "Testator") in front of 2 persons acting as witnesses at least age 18 who then also sign it. Testator and witnesses should be in 1 room and see all others sign.

LAST WILL AND TESTAMENT

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

_____.

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

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

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

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

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

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

5. ADMINISTRATION. I nominate and appoint _____ as Personal Representative including for me, my Will, and my estate.

6. 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).

7. 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 North 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, including I am specifically not providing for children of a deceased child of mine.

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 recipient of property who later loses it or who pays to keep it may require others or the estate to pay or do exoneration.

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

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

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 should be paid based on a percentage of estate property or similar.

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, digital assets, inheritances owed me, and all I had 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 North 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, sign my name to this instrument, and being first duly sworn do hereby declare to the undersigned authority that I sign and execute this instrument as my Will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes herein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence, and I do all this on the _____ day of _____, 20____.

Testator's Signature

Testator's Printed Name

WITNESSES

The foregoing Will was this _____ day of _____, 20____, signed, sealed, published, and declared by the Testator as Testator's Will in our presence, and we the Witnesses, at the Testator's request and in Testator's presence, and in the presence of each other, have hereunto subscribed our names acting as witnesses on the above date.

Witness Signature

Printed Name and Residence of Witness

Witness Signature

Printed Name and Residence of Witness

CHAPTER 9

FORM 3: SELF-PROVING AFFIDAVIT

FORM IS SOMETIMES DONE WITH WILL TO REDUCE LATER LEGAL WORK

This form can be done after a Will to help with the later legal work involved with people using a Will when the Testator dies. 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 N.D.C.C. § 30.1-08-04.

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 won't be followed later by a judge or 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 should know how to fill out the Self-Proving Affidavit. Once it is done the Self-Proving Affidavit is then usually stapled or paper-clipped to the Will it supports.

SELF-PROVING AFFIDAVIT

STATE OF NORTH 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 Testator's Will and that the Testator had signed willingly or willingly directed another to sign for the Testator, and that the Testator executed it as the 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 a witness and that to the best of our knowledge the Testator was at that time 18 years of age or older, of sound mind, and under no constraint or undue influence.

Signature of Testator

Signature of Witness

Signature of Witness

Notary:

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

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

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

N.D.C.C. § 30.1-08-13

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

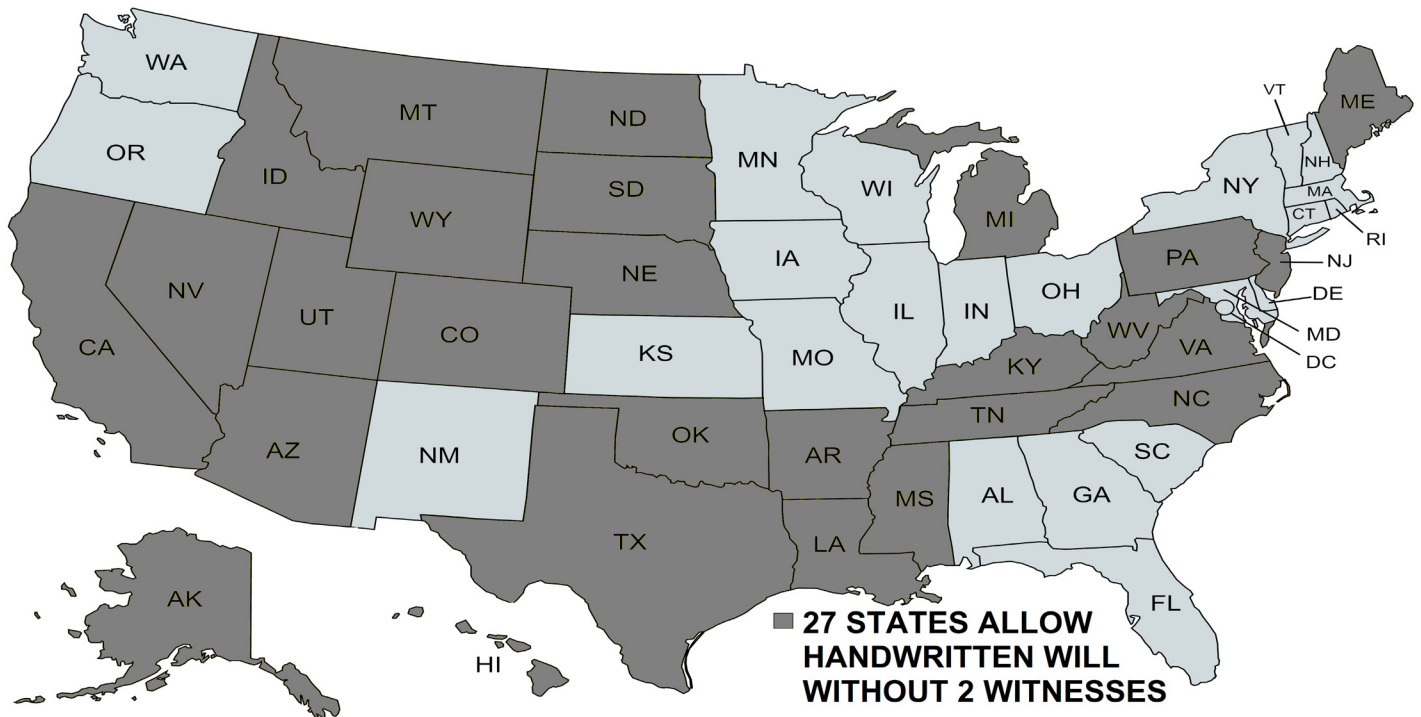
FORM 5: HANDWRITTEN WILL

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 NORTH DAKOTA

In 27 states including North 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 now live in Cass County, North 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 and Guardian of the Estate of their property and money.*

May 8, 2023 John David Smith

CHAPTER 12

FORM 6: HEALTH CARE DIRECTIVE

FORM CAN NAME HEALTH CARE AGENT AND GIVE INSTRUCTIONS

This form lets a person name someone to control health care and if wanted give health care instructions. This form also can cover the very serious issue about what to do if someone later has a terminal illness or will remain unconscious, and many people call these “Living Will” issues. This is a statutory form found at the North Dakota Supreme Court website. This form is “durable” so is effective if a person is ever incapacitated.

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). In other states the Agent is often called the Attorney-In-Fact and “Health Care Power Of Attorney” is often the name of their form. Often named as Agent is a spouse, adult child, relative, or a friend. A person naming an Agent for their health care can avoid family or friends having to rush to a judge to get power over their care. A second person can be named to be Agent if the first person doesn’t serve but many people skip this since it’s rarely needed. The Agent usually should not be a worker or owner at a place giving health care unless they are a relative.

IN FORM CAN GIVE INSTRUCTIONS AND “LIVING WILL” INSTRUCTIONS

First, the form has room for health care instructions which many people skip since an Agent or family is trusted to decide things, and if instructions aren’t clear doctors or others may delay or not obey the form. Second, the form can cover the very serious issue about what to do if a person later is incapacitated and is dying (has a terminal condition) or permanently unconscious. These are often called “Living Will” issues and covered in a separate document in many states. Many people skip this and just trust an Agent or family to wisely stop care. But some people write a thing like: “If this occurs stop all care and let me die naturally”. There is also a question on pain medications that may shorten life, and some people write to say this is fine since time sick in a bed isn’t fun, and maybe write a thing like: “Give all pain relief even if it shortens my life”.

IN FORM CAN SAY WHAT SHOULD HAPPEN TO BODY AFTER DEATH

The form has optional questions on what to do with the dead body, which can cover any burial, cremation, funeral, tombstone, ceremonies, foods, and celebration dinner. North Dakota has no separate form for this. This can also be done in a Will or signed note. By law closest family members are in charge (starting with a spouse and then children), but legally they should do what the dead person wanted if the estate can afford it.

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. As the form explains witnesses should not be family or certain other persons, and at least 1 witness must initial to say they are not involved in giving health care. There is also a final place at very end to sign. Once it is done the form usually is shown to places that may give care to put in the person’s file. To cancel the form a person usually tells all places shown the form that it is canceled. Note, people can file the form in the “ND Health Care Directive Registry” but most skip this since usually a doctor, nursing home, or hospital see the form directly and often they don’t bother to check the Registry.

HEALTH CARE DIRECTIVE

<http://www.legis.nd.gov/cencode/t23c065.pdf>

I, _____, understand this document allows me to do ONE OR ALL of the following:

PART I: Name another person (called the health care agent) to make health care decisions for me if I am unable to make and communicate health care decisions for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or my agent must act in my best interest if I have not made my health care wishes known. AND/OR

PART II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care and my family, in the event I cannot make and communicate decisions for myself. AND/OR

PART III: Allows me to make an organ and tissue donation upon my death by signing a document of anatomical gift.

PART I: APPOINTMENT OF HEALTH CARE AGENT THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS FOR ME IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS FOR MYSELF (I know I can change my agent or alternate agent at any time and I know I do not have to appoint an agent or an alternate agent)

NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II and/or Part III. None of the following may be designated as your agent:

- your treating health care provider, a nonrelative employee of your treating health care provider,
- an operator of a long-term care facility, or a nonrelative employee of a long-term care facility.

When I am unable to make and communicate health care decisions for myself, I trust and appoint _____ to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me: _____

Telephone number of my health care agent: _____

Address of my health care agent: _____

(OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If my health care agent is not reasonably available, I trust and appoint _____ to be my health care agent instead.

Relationship of my alternate health care agent to me: _____

Telephone number of my alternate health care agent: _____

Address of my alternate health care agent: _____

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO DO IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS FOR MYSELF (I know I can change these choices). My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest. Whenever I am unable to make and communicate health care decisions for myself, my health care agent has the power to:

- (A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service, or procedures. This includes deciding whether to stop or not start health care that is keeping me or might keep me alive and deciding about mental health treatment.
- (B) Choose my health care providers.
- (C) Choose where I live and receive care and support when those choices relate to my health care needs.
- (D) Review my medical records and have the same rights that I would have to give my medical records to other people.

If I DO NOT want my health care agent to have a power listed above in (A) through (D) OR if I want to LIMIT any power in (A) through (D), I MUST say that here:

My health care agent is NOT automatically given the powers listed below in (1) and (2). If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of the power; then my agent WILL HAVE that power.

- ____ (1) To decide whether to donate any parts of my body, including organs, tissues, and eyes, when I die.
- ____ (2) To decide what will happen with my body when I die (burial, cremation). If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here:

PART II: HEALTH CARE INSTRUCTIONS

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you MUST complete, at a minimum, Part II (B) if you wish to make a valid health care directive. These are instructions for my health care when I am unable to make and communicate health care decisions for myself. These instructions must be followed (so long as they address my needs).

(A) THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

I want you to know these things about me to help you make decisions about my health care:
My goals for my health care:

My fears about my health care:

My spiritual or religious beliefs and traditions:

My beliefs about when life would be no longer worth living:

My thoughts about how my medical condition might affect my family:

(B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then stopped if they do not help. I have these views about my health care in these situations: (Note: You can discuss general feelings, specific treatments, or leave any of them blank).

If I had a reasonable chance of recovery and were temporarily unable to make and communicate health care decisions for myself, I would want:

If I were dying and unable to make and communicate health care decisions for myself, I would want:

If I were permanently unconscious and unable to make and communicate health care decisions for myself, I would want:

If I were completely dependent on others for my care and unable to make and communicate health care decisions for myself, I would want:

In all circumstances, my doctors will try to keep me comfortable and reduce my pain. This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:

There are other things that I want or do not want for my health care, if possible:

Who I would like to be my doctor:

Where I would like to live to receive health care:

Where I would like to die and other wishes I have about dying:

My wishes about what happens to my body when I die (cremation, burial):

Any other things:

PART III: MAKING AN ANATOMICAL GIFT

I would like to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes. I wish to donate the following (initial one statement):

☐ Any needed organs and tissue.

☐ Only the following organs and tissue: _____

PART IV: MAKING THE DOCUMENT LEGAL

PRIOR DESIGNATIONS REVOKED. I revoke any prior health care directive.

DATE AND SIGNATURE OF PRINCIPAL (YOU MUST DATE AND SIGN THIS HEALTH CARE DIRECTIVE)

I sign my name to this Health Care Directive Form on

_____ at _____, _____
(date) (city) (state)

(You Sign here)

NOTARY PUBLIC OR STATEMENT OF WITNESSES

1. A person you designate as your agent or alternate agent;
2. Your spouse;
3. A person related to you by blood, marriage, or adoption;
4. A person entitled to inherit any part of your estate upon your death; or
5. A person who has, at the time of executing this document, any claim against your estate.

(Signature of Notary Public)

- (1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.
- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: []

(Signature of Witness One)

(Address)

- (1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.
- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: []

(Signature of Witness Two)

(Address)

ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY.

I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes incapacitated. I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this power of attorney at any time in any manner.

If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is not able to make health care decisions, I must notify the principal's physician.

(Signature of agent/date)

(Signature of alternate agent/date)

PRINCIPAL'S STATEMENT

I have read a written explanation of the nature and effect of an appointment of a health care agent that is attached to my health care directive.

Dated this _____ day of _____, 20 _____.

(Signature of Principal)

CHAPTER 13

FORM 7: PHYSICIAN ORDERS FOR LIFE SUSTAINING TREATMENT

FORM SAYS STARTING IMMEDIATELY DO NOT TRY SOME HEALTH CARE

The Physician Orders For Life Sustaining Treatment form (often called the “POLST” form) lets a person do the very serious step of saying starting immediately do not try any of the health care a person can select in the form such as C.P.R. 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 in these places too. This book’s form is a standard form issued by the state. Note, the POLST form has mostly replaced the older “Do-Not-Resuscitate form” which is similar but only covers resuscitation. Most other states have a similar 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 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 their family or Agent for health care to consider all factors and wisely say 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 a form usually is shown to doctors and places that may give health care so they can follow it. Some people keeps copies handy for themselves or family to show to paramedics and others who want to give care. The form is sometimes 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 that saw the form that it is canceled. Note, people can also file the POLST form in the “ND Health Care Directive Registry” but most skip this since usually a person shows the form directly to doctors and any place that may give care, and often doctors and facilities don’t bother to check the Registry.

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

North Dakota POLST: Physician Orders for Life Sustaining Treatment

Physician Orders for Life-Sustaining Treatment (POLST)

FIRST follow these orders, THEN Call the appropriate medical contact.
These medical orders are based on the patient's medical condition and wishes. Any section not completed implies full treatment for that section. Everyone shall be treated with dignity and respect.

Patient's Last Name

Patient's First Name/Middle Initial

Patient's Date of Birth (mm/dd/yyyy)

A
Check
One

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

☐ CPR/ATTEMPT RESUSCITATION

☐ DNR/DO NOT ATTEMPT RESUSCITATION (Allow Natural Death)

When not in cardiopulmonary arrest, follow orders in B and C.

B
Check
One

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

Comfort Measures always provided regardless of level of care chosen.

☐ **COMFORT MEASURES ONLY** - Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, oral suction and manual treatment of airway obstruction as needed for comfort. Patient prefers no transfer to hospital for life-sustaining treatments. Transfer if comfort needs cannot be met in current location.

☐ Avoid calling 911, call _____ instead (e.g. hospice)

☐ If possible, do not transport to ER (when patient can be made comfortable at residence)

☐ If possible, do not admit to the hospital from ER (e.g. when patient can be made comfortable at residence)

☐ **LIMIT INTERVENTIONS AND TREAT REVERSIBLE CONDITIONS** - Provide interventions aimed at treatment of new or reversible illness/injury or non-life threatening chronic conditions. In addition to treatment described in Comfort-Measures Only, use medical treatment, IV antibiotics, and IV fluids as indicated. Do not intubate. May use non-invasive positive airway pressure. Duration of invasive or uncomfortable interventions should be limited. (Generally, avoid intensive care)

☐ **FULL TREATMENT** - Use all appropriate medical and surgical interventions as indicated to support life. Transfer to hospital if indicated. Includes intensive care.

Additional Orders: (e.g. dialysis, etc.)

C
Check
One

Artificially Administered Fluids and Nutrition: Always offer food/fluids by mouth if feasible and desired.

Check One

☐ No artificial nutrition by tube.

☐ Defined trial period of artificial nutrition by tube.

☐ Artificial nutrition and hydration unless it provides no benefit.

☐ Long-term artificial nutrition by tube.

Additional Orders:

D
Must
fill out

DOCUMENTATION OF DISCUSSION (Required)

☐ Patient (if patient has capacity)

If patient lacks capacity:

☐ A Health Care Directive

☐ Health Care Agent

☐ Person legally authorized to provide informed consent (See reverse)

Health Care Agent/Legal Representative Name

Relationship

E

PATIENT or Health Care Agent/Legal Representative (Required)

Signature

(Form Does Not Expire) Date of signature

F

ATTESTATION OF MD/DO/APRN/PA (Required) By signing below, I attest that these medical orders are, to the best of my knowledge, consistent with the patient's current medical condition and preferences.

Print Name of MD/DO/APRN/PA Name

Signer Phone Number

Signer License Number

MD/DO/PRN/PA Signature: required

Date: required

Time: required

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

North Dakota POLST: Physician Orders for Life Sustaining Treatment

Patient's Name		Patient's Date of Birth	
Health Care Agent/Legal Representative Name	Relationship	Phone Number	Address
Name of Health Care Professional Preparing Form	Preparer Title	Phone	Date Prepared

DIRECTIONS FOR HEALTH CARE PROFESSIONALS

North Dakota Century Code section 23-12-13 authorizes the following persons to give informed consent for an incapacitated patient in the following order of priority:

- a: A health care agent;
- b: The appointed guardian or custodian of the patient, if any;
- c: The patient's spouse who has maintained significant contacts with the incapacitated person;
- d: Children of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person;
- e. Parents of the patient, including a stepparent who has maintained significant contacts with the incapacitated person;
- f. Adult brothers and sisters of the patient who have maintained significant contacts with the incapacitated person;
- g. Grandparents of the patient who have maintained significant contacts with the incapacitated person;
- h. Grandchildren of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person; or
- i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant contacts with the incapacitated person.

Completing POLST

- Must be completed by a health care professional based on patient preferences and medical indications.
- POLST must be signed and dated by a physician, advanced practice registered nurse, or physician assistant if delegated, to be valid. Verbal orders are acceptable with follow-up signature by physician, advanced practice registered nurse, or physician assistant if delegated in accordance with facility/community policy.
- Use of original form is strongly encouraged. Photocopies and FAXes of signed POLST forms are legal and valid.

Using POLST

- Any section of POLST not completed implies full treatment for that section.
- A automatic external defibrillator (AED) should not be used on a patient who has chosen "Do Not Attempt Resuscitation."

Additional copies of the ND POLST are available here: www.honoringchoicesnd.org/

Faxed copies and photocopies of this form are valid.

To void this form, draw a line across Sections A - D and write "VOID " in large letters.

- When comfort cannot be achieved in the current setting, the patient, including someone with "Comfort Measures Only," should be transferred to a setting able to provide comfort (e.g., pinning of a hip fracture).
- An IV medication to enhance comfort may be appropriate for a patient who has chosen "Comfort Measures Only."
- A patient with capacity or the health care representative (if patient lacks capacity) can revoke the POLST at any time and request alternative treatment.

Clarifying POLST

- **Comfort Measures Only:** At this level, provide only palliative measures to enhance comfort, minimize pain, relieve distress, avoid invasive and perhaps futile medical procedures, all while preserving the patients' dignity and wishes during their last moments of life.
- **Limit Interventions and Treat Reversible Conditions:** The goal at this level is to provide limited additional interventions aimed at the treatment of new and reversible illness or injury or management of non life-threatening chronic conditions. Treatments may be tried and discontinued if not effective. Comfort Measures will be offered.
- **Full Treatment:** The goal at this level is to preserve life by providing all available medical treatment and advanced life support measures when reasonable and indicated. For patient's designated DNR status in section A above, medical care should be discontinued at the point of cardio and respiratory arrest. Comfort Measures will be offered.

Reviewing POLST

This POLST should be reviewed periodically and a new POLST completed if necessary when:

1. The patient is transferred from one care setting or care level to another, or
2. There is a substantial change in the patient's health status, or
3. The patient's treatment preferences change.
4. The ND POLST form does not expire.

CHAPTER 14

FORM 8: GENERAL DURABLE 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 form available at the North Dakota Supreme Court website for people to use if they want.

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 "Attorney in Fact" or sometimes the "Agent". 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 PERSON CAN SAY THE TIME WHEN THE FORM HAS POWER

In the form a person can either say a date when power of the form starts, and most people write the date they are signing the form. There is a second option to say the form only has power when a person is incapacitated (like by illness so a person can't think rationally or stay conscious), but doing this can cause legal problems since banks and others can delay for months and demand medical proof in court about this.

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 often tell places that saw the document it is canceled, and they also tell the Attorney-in-Fact and take back copies and maybe revoke it in writing (this can be a note saying a thing like: "The power of attorney done on _____ is revoked and canceled").

GENERAL DURABLE POWER OF ATTORNEY

(North Dakota Supreme Court form)

I, _____, the Principal, whose mailing address is: _____,
designate and appoint _____, whose mailing address is: _____,
as my Attorney-in-Fact and agent in my name and for my benefit:

1) General Grant of Power: To exercise or perform any act, power, duty, right or obligations that I now have, or may acquire in connection with, arising from or relating to any person, item, transaction, business, real or personal property, tangible or intangible thing or any matter whatsoever;

- a) Powers of Collection and Payment: To request, ask, demand, sue for, recover, collect, receive, hold, and possess all such sums of money, debts, dues, commercial paper, checks, drafts, accounts, dividends, certificates of deposit, annuities, pension and retirement benefits, insurance benefits and proceeds, documents of title, real and personal property which I now have or should subsequently become owned by, or due, owing, payable or belonging to me, or in which I have or may subsequently acquire interest, to have, use and take all lawful means and equitable and legal remedies, procedures and writs in my name for their collection and recovery;
- b) Power to Acquire and Sell: To lease, purchase, exchange, grant options to sell, sell, and convey real or personal property, tangible or intangible, including homestead property and under such covenants, as the attorney-in-fact shall deem proper;
- c) Management Powers: To maintain, repair, improve, invest, manage, insure, rent, lease, encumber, and in any manner deal with any real or personal property, tangible or intangible rights or interests, that I now own or may subsequently acquire, in my behalf, and in my name under such terms and conditions as the attorney-in-fact shall deem proper; and
- d) Instruments: To sign, seal, execute and deliver all instruments in writing of whatsoever kind and nature as may be necessary and proper.

2) This document is to be construed and interpreted as a general durable power of attorney. The listing of specific items, rights, acts or powers is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Attorney-in-Fact.

3) The rights, powers, and authority of the Attorney-in-Fact granted shall begin and be in full force and effect on _____, 20____ (date document is signed).

4) CHECK ONE:

☐ This General Durable Power of Attorney shall not be affected by any subsequent disability or incapacity of the principal or by lapse of time. The rights, powers, and authority of the Attorney-in-Fact shall begin and be in effect on _____, 20____ (*date document is signed*).

OR

☐ This General Durable Power of Attorney becomes effective upon the disability or incapacity of the principal.

5) This General Durable Power of Attorney may be revoked by the Principal at any time that the Principal has the capacity to do so. Any revocation must be in writing and delivered to the named Attorney-in-Fact.

Dated this _____ day of _____, 20_____.

(Signature)

(Printed Name)

(Address) (City, State, Zip Code) (Telephone Number)

Notary or Officer:

Signed and sworn to before me on _____, 20_____ by

_____.

(Notary Public or Clerk of Court)

If Notary, my commission expires: _____

CHAPTER 15

FORM 9: POWER OF ATTORNEY FOR CARE AND CUSTODY OF 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 the form the North Dakota Supreme Court website has provided free for people to use. People who want can transfer more official power over children by doing at court a Temporary Guardianship or other more serious thing. Using this form can avoid need for serious legal actions like foster care.

FORM CAN GIVE POWER TO SOMEONE OVER CHILD UNDER 18

In the form a parent or guardian can easily share some power over a child under 18 with some person. The person getting power can be called the "Attorney-In-Fact" but the term "Agent" is more often used now. Often receiving power is a relative, friend, or teacher now helping watch a child, or who is willing to do this if ever 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 times a parent can come quickly. This form is only valid for up to 6 months. People with more than 2 children can modify the form to add room for them or can just do multiple forms. Power over health care and school issues is included in the form, but no power to agree to adoption or any permanent change is given. The person who did the form can fire or overrule the person they named.

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 if ever needed. To cancel the form people often tell places that saw the document it's canceled, and they also tell the Attorney-in-Fact and take back copies and maybe revoke it in writing (this can be a note saying a thing like: "The power of attorney done on ____ is revoked and canceled").

POWER OF ATTORNEY FOR CARE AND CUSTODY OF MINOR CHILD

(North Dakota Supreme Court form)

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

_____ (name), born on _____ (DOB)

_____ (name), born on _____ (DOB)

2. My address is _____ (street address)
_____ (city, state, zip code)

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

Name _____

Address _____

City, State, Zip Code _____

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 of signing this Power of Attorney) or until the powers of the attorney in fact are revoked by me in writing.

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

_____ (Signature) _____ (Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

Notary or Officer: Signed and sworn to before me on _____, 20____
by _____.

(Notary Public or Clerk of Court)

If Notary, 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 Grand Forks Co., North 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. LIST OF SPOUSE AND CHILDREN. To help show I am mentally competent and have sufficient memory to make a Will I wish to list any living spouse and living children I now have. I currently have the following living spouse and living children:

none

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

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

SKIPPED

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

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

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

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

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

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

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

The facts support and Testator wants North 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, including I am not providing for children of a deceased child of mine and also some of my children.

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 recipient of property who later loses it or who pays to keep it may require others or the estate to pay or do exoneration.

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

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

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 should be paid based on a percentage of estate property or similar.

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, digital assets, inheritances owed me, and all I had 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.

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

TESTATOR

IN WITNESS WHEREOF, I, Paul Samuel Maxwell, the Testator, sign my name to this instrument, and being first duly sworn do hereby declare to the undersigned authority that I sign and execute this instrument as my Will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes herein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence, and I do all this on the 22nd day of June, 2022.

Paul Samuel Maxwell

Testator's Signature

Paul Samuel Maxwell

Testator's Printed Name

WITNESSES

The foregoing Will was this 22nd day of June, 2022, signed, sealed, published, and declared by the Testator as and for the Testator's Will in our presence, and we, at the Testator's request and in the Testator's presence, and in the presence of each other, have hereunto subscribed our names acting as witnesses on the above date.

Eve Mable Rogers

Witness Signature

Eve Mable Rogers, 14 2nd St., Grand Fords, ND 58133

Printed Name and Residence of Witness

Mary Ann Moon

Witness Signature

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

Printed Name and Residence of Witness

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

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

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

I give big oak table to Anne J. Smith .

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

I give 63 Wentworth Road, Minot, North Dakota to Kenneth Alan Ford .

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

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

I give Irish bracelet and grandma Ann's wedding ring to James Eric Hanson .

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 .

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

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

a) to Ruth May 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.

5. ADMINISTRATION. I nominate and appoint Ruth May Kent my wife as Personal Representative including for me, my Will, and my 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 North 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, including I am not providing for children of a deceased child of mine and also some of my children.

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.

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

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

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 should be paid based on a percentage of estate property or similar.

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, digital assets, inheritances owed me, and all I had 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.

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

TESTATOR

IN WITNESS WHEREOF, I, Paul Brian Kent, the Testator, sign my name to this instrument, and being first duly sworn do hereby declare to the undersigned authority that I sign and execute this instrument as my Will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes herein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence, and I do all this on the 30th day of December, 2019.

Paul Brian Kent

Testator's Signature

Paul Brian Kent

Testator's Printed Name

WITNESSES

The foregoing Will was this 30th day of December, 2019, signed, sealed, published, and declared by the Testator as and for the Testator's Will in our presence, and we, at the Testator's request and in the Testator's presence, and in the presence of each other, have hereunto subscribed our names acting as witnesses on the above date.

Olivia Joy Pawlenty

Witness Signature

Olivia Joy Pawlenty, 82 Forest Road, Minot, North Dakota 58501

Printed Name and Residence of Witness

Roy Felix Pawlenty

Witness Signature

Roy Felix Pawlenty, 82 Forest Road, Minot North Dakota 58501

Printed Name and Residence of Witness

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

my son Adam Michael Smith

_____.

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

I give \$100 to each one of cousins which will be about \$1,400 in total.

I give \$400 to Baker Food Shelf in West Fargo, North Dakota.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

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

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

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

6. GUARDIAN. I hereby name Judy Paula Baker 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).

7. 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 North 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, including I am not providing for children of a deceased child of mine and also some of my children.

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 recipient of property who later loses it or who pays to keep it may require others or the estate to pay or do exoneration.

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

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

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

No lawyer hired should be paid based on a percentage of estate property or similar.

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.

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 North Dakota Uniform Transfers to Minors Act or a similar law anywhere, and they may pick the Custodian including themselves.

TESTATOR

IN WITNESS WHEREOF, I, Amy Dorothy Smith, the Testator, sign my name to this instrument, and being first duly sworn do hereby declare to the undersigned authority that I sign and execute this instrument as my Will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes herein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence, and I do all this on the 21st day of June, 2021.

Amy Dorothy Smith

Testator's Signature

Amy Dorothy Smith

Testator's Printed Name

WITNESSES

The foregoing Will was this 21st day of June, 2021, signed, sealed, published, and declared by the Testator as and for the Testator's Will in our presence, and we, at the Testator's request and in the Testator's presence, and in the presence of each other, have hereunto subscribed our names acting as witnesses on the above date.

John Elliot Potter

Witness Signature

John Elliot Potter, 2 Spruce St, Sherwood, ND 58050

Printed Name and Residence of Witness

Ann Paula Blom

Witness Signature

Ann Paula Blom, 70 Rocky Road, Clarksville, ND 58011

Printed Name and Residence of Witness

Sample Filled Out Form: Self-Proving Affidavit

SELF-PROVING AFFIDAVIT

STATE OF NORTH DAKOTA

COUNTY OF Burleigh

We, Amy Dorothy 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 Testator's Will and that the Testator had signed willingly or willingly directed another to sign for the Testator, and that the Testator executed it as the 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 a witness and that to the best of our knowledge the Testator was at that time 18 years of age or older, of sound mind, and under no constraint or undue influence.

Amy Dorothy Smith
Testator

John Elliot Potter
Witness

Ann Paula Blom
Witness

Subscribed, sworn to, and acknowledged before me by Amy Dorothy 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)

Signed: John Q. Doe

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: Amy Dorothy Smith