

**DAVENPORT'S
DELAWARE WILLS
AND
ESTATE PLANNING
LEGAL FORMS**

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

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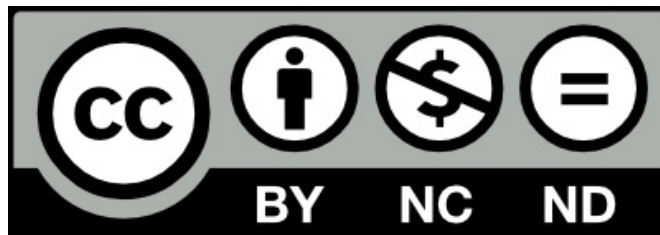
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CHAPTER 1

BOOK BASICS AND LIST OF FORMS

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

This book helps people in Delaware do legal documents to help control their health care, property, money, children, funeral, and more if later they are absent, sick, or dead. Doing documents to control things later like this is called “Estate Planning”. People mostly have a right to control these matters so judges, doctors, and other people mostly 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 Delaware legal forms (but most people use just a few of these forms).

WILL RELATED FORMS

Form 1. Will (Standard) – a Will (also called a Last Will And Testament) lets a person control things after their death like who 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.

HEALTH CARE FORMS

Form 5. Advance Health-Care Directive – lets a person name someone to be Agent to control health care if the person is later incapacitated and, also, say if health gets very bad and a person is incapacitated how to stop giving certain medical treatments (some people call these “Living Will” issues).

Form 6. Delaware Medical Orders For Scope Of Treatment – does serious act of telling paramedics, doctors, and others that immediately from now on don't try health care listed in the form like C.P.R. or tube feeding (this form has mostly replaced the older Do-Not-Resuscitate form).

GIVING POWER FORMS

Form 7. Short Form Power Of Attorney – lets power over money, property, and more be shared with a very trusted person so they can do things, like use accounts, pay bills, get records, and sell items.

Form 8. Power Of Attorney Over Minor Child – lets a parent share power with a person over a minor child under age 18 for the person to use if needed including health care and school issues.

Form 9. Declaration Of Disposition Of Last Remains – lets a person name someone to control and manage their funeral, burial, cremation, and related matters, and also give instructions about all this.

DELAWARE LAW ON ESTATE PLANNING COVERS MOST PEOPLE HERE

This book is only for Delaware since Estate Planning law and legal documents vary a lot 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 some ways Delaware law is a bit different. This book can't cover all legal issues but should suit most 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 this can be costly, take months of work, and they can make mistakes. In life people often pick a cheap option. Importantly often a hospital, charity, state agency, or state legislature has made a form most people use and call the "standard form", and doctors, judges, and other people may not like to follow anything else. This book does provide 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 a lot of money and energy on. Benefits seem very low for young people since only 4% of people die by age 50, and only about 0.13% of children before age 18 have both parents die. See *Social Security Tables: Felicitie Bell; Parent Mortality Census SIPP Paper #288*. Many people spend more time and money on getting good 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.
- Though separate forms exist usually organ donation is handled in drivers license or state ID paperwork.

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, DELAWARE, OR OTHER TAX IS USUALLY OWED AT DEATH

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

The Federal Estate And Gift Tax is the only Federal tax that may be owed due to a death, and it only starts when a tax credit is used up that covers \$13.99 million a person in 2025 and later.

Delaware no longer has any estate tax or inheritance tax that may be owed upon the death of a Delaware resident. No other county, city, or other tax is imposed upon a death in Delaware.

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

CHAPTER 2

TERMS, PROPERTY LAW, AND HELPFUL INFORMATION FORM

THERE ARE BASIC TERMS AND IDEAS IN ESTATE PLANNING

Some legal terms and ideas are basic to Estate Planning.

■ “Estate Planning” is about people doing legal documents to control things if later absent, sick, or dead. After a document is done people are mostly free to sell or transfer property, instruct doctors, or change forms.

■ A “person doing a legal document” and “doing a form” means the form is for and affects that person.

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

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

■ “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).

■ Delaware state law is called the “Delaware Code”. Delaware law is grouped in a few dozen “Titles”. Each Delaware law is referred to as a “statute” or “section” shown by a “§” or “s” mark. Each Delaware law and can be cited a few different ways, like: 11 Del. C. § 102, Del. Code § 11-102, and Delaware Code 11-102. A legal form written into state law for people to find and use if they want 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 left in their name that at death or soon after didn’t automatically go to new owners or start doing this. The word estate is also the name for a temporary entity run by an Executor to do things after a death (it’s like a small corporation).

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 HAPPEN AUTOMATICALLY AND 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 to name 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 papers say to. Life insurance usually goes to the named beneficiary.

Trying to do non-probate transfers for all things is called “avoiding probate”, but few people try this since it can cause years of hassle, benefits are small, and often some thing is missed. When doing a Will people should consider non-probate transfers that will occur automatically on death and consider what will be left.

“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 A PERSON CONTROL THINGS AFTER THEIR DEATH

A Will is a legal document done by a person to control some things after their death. A person doing a Will is called the “Testator” or “Will maker”. 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).

A WILL USUALLY MUST BE SIGNED WITH 2 WITNESSES

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

Under Delaware law a document to be a Will usually must show it's a Will by its words, and the person doing it must sign it in front of at least 2 persons acting as witnesses who sign too. A Will spoken on a video or audio recording with no writing usually has no legal effect at all. Some other states let witnesses be skipped for a Will that's all handwritten by a person but Delaware does not do this.

WITNESSES SHOULD AT LEAST AGE 18 AND NOT GETTING GIFTS IN THE WILL

A person to witness a Will must be at least age 18. It is better but not required that witnesses not be extremely old, not live far away, and not be named in the Will as Executor, Guardian, or to any similar job. Unlike some states in Delaware a Will is still valid if a witness is getting Will gifts, and also any Will gifts to a witness usually will be carried out later. But many people to avoid even the appearance of misconduct or unfairness pick people as witnesses so they (and often their spouse) are not named to get things in a Will. Usually used as witnesses are friends, neighbors, workers at a business, strangers, and sometimes family.

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

The person doing a Will should sign it with at least 2 witnesses who then also sign while all are in 1 room and see others sign. People showing others an I.D. is not required but common. A Testator need not initial Will pages. A Testator or witness should use their full legal name unless they dislike and rarely use it. 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 they say 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.

MOST WILLS AT START HAVE PERSON NAME ANY SPOUSE AND CHILDREN

Very importantly, many Wills including this book's Will forms start with a place for a Testator to name any current living spouse and living children of theirs. Natural or adopted child should be written here, including usually any such children born outside marriage. A person without these people can skip this or put “none”. Under state 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 give them a share or all of the estate by claiming a Testator forgot them. After listing a person in a Will a Testator may be legally free to give them nothing.

CANCELING OLD WILLS USUALLY NOT A PROBLEM

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

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 person. A bond is insurance from a company to insure against misconduct. A Testator writing a Will usually doesn’t want this since the persons Testator names are trusted and them later needing a bond uses up estate funds.

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. Though rarely done a person while living can file a Will for safekeeping at the Register of Wills in their county.

A WILL NAMES AN EXECUTOR TO DO THINGS AFTER DEATH

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

Most Wills name someone as “Executor” to after a death do things like collect and give decedent’s money and property to new owners, handle decedent’s debts, and do probate. The law gives an Executor many legal powers to do things. If a Will fails to name an Executor a judge picks someone, but family may fight over who to suggest. The term “Personal Representative” and not Executor is now mostly used in Delaware for the person doing this work, but these mostly mean the same thing. Will gifts can go to an Executor.

EXECUTOR CAN BE PAID AND ESTATE PAYS ALL OF EXECUTOR’S COSTS

An Executor can ask to be paid for their work from estate funds. Pay is whatever a judge later thinks is reasonable and Delaware law unlike some states does not pay an Executor a percentage of the estate. For example, a judge may find an Executor showed they spent 5 hours a week for 40 weeks managing an estate of \$500,000 and that \$30 an hour is fair, so pay is \$6,000. But some Testators don’t want pay for the Executor so they add a Will line saying to not pay them. In reality most Executors later skip asking for pay to not owe income tax and leave more to carry out Will gifts. Expenses an Executor has like insurance, repairs, mortgages, utilities, funeral, attorneys, and probate costs are usually paid for with estate money or property. Any lawyer an Executor hires usually is paid an hourly or fixed sum the lawyer and Executor agree upon.

EXECUTOR IS PERSON AT LEAST 18 AND SECOND PERSON RARELY NEEDED

A person to be Executor must be at least age 18 and usually have no bad criminal record like a felony unless a judge later allows it. Executors needn’t live in the state but it makes work easier, and non-residents may face some extra legal work. Naming 2 people to both be Executor is rare due to the risk of delay or arguments and since any 1 person named should be trusted. People can name a 2nd person to be Executor if the 1st person isn’t available but most skip this because it’s rarely needed and a judge can name a person. To add a fallback Executor a Will can say: “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 some rights which this book later covers.

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

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

IN WILL CAN DO “GENERAL GIFTS” LIKE OF MONEY

Wills can do “general gifts” where what is gifted is not particular property but can be flexibly chosen, like “I give 1 of my 3 cars to Ed Po” which lets an Executor pick which car. The usual general gift is money, like “I give \$5 to Ed Hu”. Money gifts are easy to write, let equal gifts be made, and are legally safer for many reasons. To carry out money gifts an Executor usually uses accounts or sells some property in the estate.

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

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

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

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

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

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

GIFT BENEFICIARIES CAN GET PERCENTAGE RATHER THAN EQUAL SHARE

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

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

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

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 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.

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 usually fine. If anyone objects a judge may have the Will and state law be followed exactly, but later people who want can voluntarily retransfer items to do what the dead person wanted.

MOST WILLS SAY FAMILY MAY LATER DO “INFORMAL PROBATE”

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

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

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

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

THE USUAL RESIDUE CLAUSE HAS 2 PARTS

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

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

EXAMPLE OF 2 PART RESIDUE CLAUSE:

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

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

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

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

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

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

SOME PEOPLE CHANGE A RESIDUE CLAUSE TO HAVE 1 PART

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

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

MUST SUFFICIENTLY DESCRIBE NAMES AND PROPERTY IN A WILL

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

Putting names in Wills is fairly easy. A judge or Executor assume a person in a Will meant people they know, so common names are OK unless 2 friends or family have the same name. Details can help if names won't be recognized or to be friendly, like "I give \$5 to my nurse Sue Ax" and "I give \$5 to loyal pal Ed Lee". If people used a nickname "also known as" or "a/k/a" may help, like "I give \$5 to Dan Smith a/k/a Old Fishy". Gifts can go to a charity, government, or group, like "I give \$80 to The Salvation Army, "I give \$10 to Dover City Library, DE", and "I give \$5 to Hill 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, Dover, Delaware, 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 Kent County, Delaware to Ann Ivy 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 STATES AND WILLS SAY PEOPLE TO GET GIFTS MUST SURVIVE 5 DAYS

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

INTESTATE LAW CONTROLS THINGS NOT COVERED BY A WILL

"INTESTATE LAW" CONTROLS THINGS NOT HANDLED BY A WILL OR SIMILAR

State "intestate law" starting at 12 Del. Code § 501 says if a person dies with no valid Will or if anything is left after Will and other transfers are done then certain surviving (living) family get decedent's the money and property. Note, "descendants" means a person's children and grandchildren, and if someone has died who would get an intestate share then often their descendants gets that share. The law roughly says, in order:

- 1) if decedent left a spouse but no parents or descendants (like a child or grandchild), the spouse gets all;
- 2) if decedent left descendants (like children or grandchildren) but no spouse, then descendants get all;
- 3) if decedent left a spouse and some descendants who are all also related to the surviving spouse, the spouse gets the first \$50,000 and 1/2 of the balance of personal property in the estate and also a life estate in the intestate real estate (to use until the spouse's death), and all descendants get the rest;
- 4) if decedent left a spouse and any descendants who are not all related to the surviving spouse, the spouse gets 1/2 of the balance of personal property in the estate and also a life estate in the intestate real estate (to use until the spouse's death), and all descendants get the rest;
- 5) if decedent left a spouse and also some living parents, the spouse gets 1/2 of the balance of the personal estate and also a life estate in intestate real estate, and the parents of decedent get the rest;
- 6) If decedent left no spouse or descendants, the decedent's closest family get things starting with decedent's parents, then brothers and sisters, then cousins, and then other close family;
- 7) if none of the above persons survive then decedent's things go to the state of Delaware.

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 the children.

CHAPTER 5

DEBT, MARRIAGE, AND CHILD ISSUES

THIS CHAPTER COVERS CERTAIN ISSUES THAT SOME PEOPLE CAN SKIP

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

DEBT ISSUES

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

If a decedent had 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 costs, health care, and funeral debts by law have some priority to be paid first. For certain reasons often not all debts are paid. People should consider how paying debts may use up money or property, leaving less to carry out Will gifts. A spouse and family usually aren't liable for decedent's debts unless they actually guaranteed or co-signed.

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

Most states have "Family Rights" a decedent's surviving spouse can claim, or if there's no spouse then decedent's surviving young children can claim, and this very helpfully may let them get some things even before most debts of decedent are paid and even before Will gifts and certain other transfers occur.

First, in the U.S. usually a surviving spouse or young children can use an "Exempt Property" right to get much of certain kinds of property of decedent, such as decedent's clothing, furniture, tools, and papers. Often property equal to \$20,000 can be claimed. Delaware law is a bit unique in not giving surviving family Exempt Property rights, but often family can keep much of a decedent's household items by saying the decedent gave them to the family or by just not disclosing them to the Executor.

Second, in the U.S. a surviving spouse or young children usually can use a "Family Allowance" right to get money to live on 1 year or so. Delaware law is a bit unique and says a surviving spouse can use a similar "Spousal Allowance" right to get only \$7,500 from decedent's money and property to live on.

Obviously if a spouse or children use these rights this leaves less property and money of a decedent to carry out Will gifts or other transfers so may interfere with these. So that family don't bother to use family rights often a person gives mostly to any spouse or young children (like over 50% and any family house).

Note, some people may want to do more legal research into these Family Rights in Delaware.

SECURED DEBTS LIKE MORTGAGE OR VEHICLE LIEN ARE NOT PAID OFF

Laws in most states say do not pay off secured debts on property of a decedent like a house mortgage or vehicle lien even if other debts are paid by Executor or in probate. This avoids using up estate resources on paying these usually big debts and leaves more estate resources to carry out Will gifts and other transfers. 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 a decedent.

MARRIAGE ISSUES

MOST STATES USE “SEPARATE PROPERTY LAW” FOR SPOUSES

Delaware and most states use the “Separate Property Law” system that says any married person mostly owns their money and property separately and not jointly with a spouse. Due to this a spouse is usually free to sell during life or gift by Will money or property they own separately and not involve a spouse. But joint ownership by 2 spouses so both own a thing and not separate ownership can arise in many ways, like by agreement, paying half a purchase price, if a gift was to both spouses, or if joint paperwork is done.

NO DELAWARE HOMESTEAD LAW AUTOMATICALLY GIVES HOME TO FAMILY

Delaware unlike some states does not have a “homestead law” saying a spouse or minor children are legally automatically entitled to the family home. Delaware homestead law mostly deals with property taxes. But many married people do paperwork so a house on 1 spouse’s death automatically goes to the other.

“COMMUNITY PROPERTY” LAW APPLIES IN OTHER STATES FOR SPOUSES

There are 9 states that use “Community Property” law for spouses (Arizona, California, Louisiana, Idaho, Nevada, New Mexico, Texas, Washington, and Wisconsin). This law roughly says property or money is owned 50/50 by spouses as Community Property if it comes from mental or physical work while married in these states (like wages or salary, managing a business, or active trading of something) or if items were bought or improved with other Community Property. People moving from these states may face issues.

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. To avoid this usually both spouses have to sign a pre-nuptial or a post-nuptial agreement carefully written by a lawyer which can be costly and hard to do. Most states have this law 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. Delaware law sets the Elective Share at 1/3 of decedent’s money and property with certain adjustments. To avoid legal tricks the Elective Share can even cover things decedent gave away recently or controlled but didn’t actually own. Clearly a spouse using the Elective Share to get 1/3 or so of decedent’s things may take so much it may 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 then any other natural or adopted parent (but not a step-parent) almost always automatically gets control of the child's care (including health care, school, and home issues). This won't occur only if the other parent will be unavailable a long time or is proven unfit in court which is rare. But just in case it is later needed (like later both parents die) a Will often names a healthy willing relative or friend as “Guardian of the Person” to give this care for a child.

WILL CAN SAY A “GUARDIAN OF THE ESTATE” MANAGES CHILD'S PROPERTY

Since a child till age 18 can't legally control property and money a Will often names a person to have the job of managing a child's property and money. Many people call this a “Guardian of the Estate” or less often a “Conservator”. This person will decide each year how to use this property and money for a child's costs (like school, living, and health care) till often age 18 when all left goes to a child. Judges often hold a yearly hearing to review this spending. A person paying things for a child (including a Guardian of the Estate) can ask to be paid back from a child's property and money. Also, as a nice option most Wills at their end say an Executor may choose to name a person to be “Custodian” to manage a young child's property or money under the new “Uniform Transfers To Minors Act” law which avoids certain costs, delays, and work.

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 Guardian of the Estate caring for a child's property. People can change a Will to name different people for the 2 positions, but this is rarely worth it since parents dying is rare, rarely do kids get much, a person smart enough to handle a child usually can handle money, and naming different people can lead to arguments and lawsuits between Guardians. Note, Will gifts can go to a person named to be a Guardian.

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

A person to be a Guardian of any type must be age 18 or older. They must not have a bad criminal record like a felony unless a judge later agrees they can serve. A Guardian need not reside in the state but being local can make work easier. The choice for a Guardian of the last living parent is almost always later 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 be Guardian over the same thing 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 more common for 2 people who are a married couple to be named for a position, but there can still be problems if they disagree or 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 can pick someone.

NAMING GUARDIANS RARELY MATTERS

A child under age 18 having parents die is rare so parents shouldn't worry that much about Guardians for children. A good U.S. study found of people under age 18 just 2.78% had lost 1 parent and just 0.13% had lost 2 parents (so 99.87% will not lose both parents by age 18). *Parent Mortality Census SIPP Paper #288.*

CHAPTER 6

BASIC IDEAS ABOUT CONTROLLING HEALTH CARE

BASIC IDEAS HELP PEOPLE UNDERSTAND CONTROLLING HEALTH CARE

Some ideas help people understand health care forms.

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

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

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

■ In forms people can give written health care instructions 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 the issue of stopping health care ("pulling the plug") has a moderate chance of mattering for a person (often due to current extreme old age or current very bad health):

-- 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 age 18. The term “Testament” is used in the form since long ago this was a different document often done with a Will.

THIS FORM IS A WILL WITH SEVERAL PARTS

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

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

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

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

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

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

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

Last is paragraphs for Testator and witnesses to date, sign, and print their name and addresses.

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

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

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

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

TESTATOR AND 2 WITNESSES WHILE TOGETHER SIGN WILL

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

LAST WILL AND TESTAMENT

I, _____, of _____, Delaware, 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 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 of any age 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 _____.

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 name, nominate, and appoint _____
as Personal Representative including for me, my Will, and my estate.

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

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

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

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 not providing for some children of mine and also children of a deceased child of mine.

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

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

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

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 Delaware Uniform Transfers to Minors Act or a similar law anywhere, and may pick the person to be Custodian including themselves.

TESTATOR

IN WITNESS WHEREOF, I, _____, the Testator, have signed this Will on the _____ day of _____, 20_____.

Testator Signature

WITNESSES

Signed, sealed, and declared by the Testator to be the Testator's Will, in the presence of us the Witnesses, who, at the Testator's request and in the Testator's presence and presence of each other, sign our names acting as witnesses the day and year last stated above.

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 child under age 18. The term “Testament” is used in the form since long ago this was a different document often done with a Will.

FORM IS A WILL WITH SEVERAL PARTS INCLUDING A GUARDIAN PART

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

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

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

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

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

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

Paragraph 6, “Guardian”, names a person to if needed be Guardian of the Person to care for minor children, and also if needed to be Guardian of the Estate 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 and witnesses to date, sign, and print their name and addresses.

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

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

- 1) a 1st space to name 1 or more persons to get the Residue, and if any named here have died before the Will maker then other persons named here in this 1st space take the dead person’s share, and
 - 2) a 2nd space to name people to get things if all people named in the 1st space have died, and if any people named in the 2nd space have died their shares go to “lineal descendants” like their children.
- People often put in the 1st space a spouse or closest family or friends, and in 2nd space next closest people.

TESTATOR AND 2 WITNESSES WHILE TOGETHER SIGN WILL

This Will after being filled out (except bits intentionally left blank) must be signed by the person doing the Will (the “Testator”) in front of at least 2 persons acting as witnesses at least 18 who then also sign.

LAST WILL AND TESTAMENT

I, _____, of _____, Delaware, 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 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 of any age 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 _____.

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 name, nominate, and appoint _____ as Personal Representative including for me, my Will, and my estate.

6. GUARDIAN. I name, nominate, and appoint _____ to be if needed the Guardian of the Person of any minor child under age 18 of mine and to have care, authority, custody, and other control of them. I also name, nominate, and appoint this same person to be Guardian of the Estate to have care, control, and power over the property, money, and estate of any minor child of mine or other minors (including as Guardian of Property and, also, as Conservator).

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 I want Delaware state law to apply to this Will and my estate.

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 not providing for some children of mine and also children of a deceased child of mine.

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

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 Guardian of any type, Conservator, Custodian, or other person managing a minor’s

property or money may use or invade the principal and sell property without court action.

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

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 Delaware Uniform Transfers to Minors Act or a similar law anywhere, and may pick the person to be Custodian including themselves.

TESTATOR

IN WITNESS WHEREOF, I, _____, the Testator, have signed this Will on the _____ day of _____, 20_____.

Testator Signature

WITNESSES

Signed, sealed, and declared by the Testator to be the Testator's Will, in the presence of us the Witnesses, who, at the Testator's request and in the Testator's presence and presence of each other, sign our names acting as witnesses the day and year last stated above.

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 is done to help with the work of using a Will after 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 12 Del. C. § 212 for people to use if they want.

FORM HELPS TO LATER SHOW A WILL WAS PROPERLY SIGNED

This form can help when trying to use a Will after a death 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 in probate court or submit a writing (if these people aren't available usually other proof can be used). Also, if this form is not 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 person who is 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. This form may not be done before the Will it supports is done. Any notary will know how to fill out and notarize this form. Once it is done the Self-Proving Affidavit is then usually stapled or just paper-clipped to the Will it supports.

SELF-PROVING AFFIDAVIT

STATE OF DELAWARE)
)
) **SS.**
COUNTY OF _____)

Before me the subscriber on this day personally appeared, _____, _____, and _____, known to me to be the Testator and the Witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn the Testator named above declared to me and to the Witnesses in my presence that the instrument is the Will of the Testator and that Testator had willingly signed or directed another to sign for the Testator, and that the Testator executed it as a free and voluntary act for the purposes therein expressed; and each of the Witnesses stated to me, in the presence and hearing of the Testator, that the Witness signed the Will acting as witness and that to the best of the Witness' knowledge the Testator was 18 years of age or over, of sound mind and under no constraint or undue influence.

Signature of Testator

Signature of Witness

Signature of Witness

Notary:

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

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 the Memorandum, Gift List, or List.

FORM GIVES EASY QUICK WAY TO WRITE MORE GIFTS

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

FORM CAN ONLY GIFT "TANGIBLE PERSONAL PROPERTY"

By law the form can only gift tangible (touchable) things, so usually not accounts or investments where ownership is tied to papers, accounts, or entities like a company. The form can only gift personal property so not real property (land or buildings). The form can't give money whether coin or paper currency, even if they are old and collectible. The form can't gift 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. Improper property written in a List is later just ignored.

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

"12 Del. C. § 212. Bequest of tangible personal property by separate writing.

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, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing:

- (1) Must either be in the handwriting of the testator or be signed by the testator and must identify the items and the legatees with reasonable certainty;
- (2) Must not be inconsistent with the terms of the will; and
- (3) Must not be inconsistent with any other writing permitted by this section unless the writing is dated in which case the writing with the latest date will control. [...]

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 with no significance apart from its effect upon the dispositions made by the Will".

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

The form must be signed and usually dated by person doing the form. Often List forms are kept with a Will. To cancel a List form it can be destroyed, crossed out, or just thrown away so it isn't 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: ADVANCE HEALTH-CARE DIRECTIVE

FORM CAN NAME HEALTH CARE AGENT AND GIVE INSTRUCTIONS

This form lets a person name someone to control health care and give instructions in case later needed. This book's form is the popular form approved by the Delaware Attorney General and provided by the Department of Health and Human Services online at <https://dhss.delaware.gov/dsaapd/advance1.html>. There is a similar statutory form which is no longer often used.

FORM CAN NAME AGENT FOR HEALTH CARE

In the "Part 1: Power of Attorney" area of the form a person can name someone as Agent to control health care if later the person is incapacitated (like by inability to communicate, be conscious, or think well). This person is often called the Attorney-In-Fact. Often named is a spouse, adult child, relative, or a friend. A person naming an Agent for health care can help avoid family or friends having to rush to a judge for power over health care if the person is later incapacitated. The Agent for health care usually should not be a worker or owner at a place giving health care unless they are a family relative.

FORM CAN SAY IN SOME BAD SITUATIONS DON'T GIVE CERTAIN TREATMENTS

In the "Part 2: End – Of – Life Decisions" area of the form a person can say what health care to not give in some bad health situations. Some other states call doing this a "Living Will" and use a separate form for this. In the Delaware form the cases covered are "terminal illness", "permanent unconsciousness", and "serious illness or frailty", and a person can say a) do as Health Care Agent says, b) prolong life by giving all care but don't give treatments that are initialed, or c) don't prolong life and don't give treatments based on whether they are initialed or not. Most people also initial to say "Comfort Care" should be given even if it shortens life. Instructions can be written down but most people skip this since they trust their Agent or family, and because if instructions are unclear then doctors and others may refuse to follow the form or even follow the Agent. Most doctors are glad to help explain the form and explain which options seem best for a person.

FORM CAN DO ORGAN DONATION IF NOT ALREADY DONE IN OTHER FORMS

In the "Part 3: Anatomical Gift Donation" area of the form a person can do Organ Donation, but many people instead handle this when they fill out their drivers license or state ID paperwork.

PERSON SIGNS FORM IN FRONT OF 2 WITNESSES

On the very first page of the form a person should write their name. The form must be signed by a person in front of 2 persons acting as witnesses who then also sign it. As the form explains certain related persons can't act as witnesses, and most often used as witnesses are neighbors, friends, workers at a business, or strangers. There is an optional area to use a notary too but most people skip this. Once the form is done it often shown quickly to places that may give care so it can be put in a person's file to follow. To cancel the form a person usually tells their doctor and maybe places that saw the form.

ADVANCE HEALTH-CARE DIRECTIVE OF

ABOUT THIS FORM

This form is a legal document that lets you name another individual or individuals as your “agent(s)” to make health-care decisions for you if you become incapable of making your own decisions (**Part 1**). It also allows you to communicate your wishes – ahead of time – regarding your care near the end of life (**Part 2**). If desired, you may also make choices about being an organ donor (**Part 3**). You can complete all of these parts, but each part can stand alone so you do not have to complete every part unless you choose.

IMPORTANT: Your agent will not be asked to make any decisions as long as you are capable and can communicate for yourself. You always have the right to give instructions about your own health care if you are able. However, if you do not write down your wishes about your health care in advance, and if you later become unable to understand, make, or communicate those wishes, they may not be honored because they may remain unknown to others.

USING THIS FORM

Part 1 of this form is a power of attorney for health care. You can name one or more persons as your agent(s) to make health-care decisions and you can decide if they may act together or one after the other.

Part 2 of this form provides you with the ability to give specific instructions regarding whether or not you wish to receive life-sustaining medical measures if you are ever declared “terminally ill” or “permanently unconscious” or “seriously ill or frail.” There is also additional space in Part 2 for you to write out any additional instructions regarding your medical care.

Part 3 of this form lets you express an intention to donate your body, organs and/or tissues following your death, if you so choose.

HOW TO SIGN THIS FORM CORRECTLY SO THAT IT IS VALID

After you have finished filling this form out, sign and date it in front of two (2) qualified witnesses as described under “About the Witnesses” below. It does not need to be notarized to be effective. You will find the signature page following Part 3. Your witnesses will also have to sign this form on the last page, following your signature.

ABOUT THE WITNESSES:

- They cannot be related to you in any way (blood, marriage, or adoption).
- They cannot be a beneficiary of your estate.
- They cannot have a claim (actual or potential) against your estate.
- They cannot have direct financial responsibility for your medical care.
- If you are a resident in a long-term-care facility when you are signing, the witnesses cannot be owners, operators, or employees of the facility, and one of the witnesses must be a patient advocate or Ombudsman designated by the Delaware Department of Health and Social Services or the Delaware Public Guardian.
- They must be over 18 years old.

***IF YOU HAVE QUESTIONS ABOUT THIS FORM,
YOU SHOULD SEEK LEGAL ADVICE BEFORE COMPLETING AND SIGNING IT.***

ADVANCE HEALTH-CARE DIRECTIVE

I, _____ (*Your Full Name*), of _____
(*Name of County You Live In*) County, Delaware, declare this to be my Advance Health-Care Directive and revoke all previous Advance Health-Care Directives, Powers of Attorney for Health-care, Living Wills and similar documents made by me.

PART 1: POWER OF ATTORNEY FOR HEALTH CARE

(OPTIONAL—If you DO NOT wish to appoint someone to make health-care decisions for you when you are unable, cross out all of Part 1 and skip to Part 2)

About your Agent: If you are a resident in a long-term care facility, the agent or agents designated below may not have a controlling interest in nor be the operator or employee of the long-term care facility in which you reside, unless the agent or agents are related to you by blood, marriage or adoption

(1) **DESIGNATION OF AGENT:** I designate the following individual as my Agent to make health-care decisions for me:

Name: _____

Address: _____
(*Street*) (*City*) (*State*) (*Zip Code*)

Telephone: _____

OPTIONAL: I hereby designate additional or successor Agent(s):

Name: _____

Address: _____
(*Street*) (*City*) (*State*) (*Zip Code*)

Telephone: _____

Name: _____

Address: _____
(*Street*) (*City*) (*State*) (*Zip Code*)

Telephone: _____

If more than one Agent has been designated above, I intend for these Agents to (**initial ONE only**):

- ☐ Act in succession (if one is not available, the next shall serve)
- ☐ Act independently (any available Agent may serve solely and independently)
- ☐ Act jointly (all Agents must act together, not independently)

(2) **AUTHORITY OF AGENT(S):** My Agent(s) is authorized to (**initial ALL that apply**):

- ☐ Provide for my admission to, or discharge from, a medical, nursing, residential, mental health or similar facility
- ☐ Enter into agreements for my care at home or in a facility
- ☐ Employ and discharge medical personnel, including physicians, psychiatrists, dentists, nurses, and therapists
- ☐ Approve medical and surgical procedures, including administration of drugs
- ☐ Consent to and arrange for the administration of pain-relieving drugs
- ☐ Consent to psychiatric treatment
- ☐ Sign medical releases for medical personnel who provide treatment to me pursuant to instructions given by my Agent
- ☐ Sign, authorize or revoke a Delaware Medical Orders for Scope of Treatment ("DMOST") or similar document under the laws of other States unless prohibited by the terms of the DMOST or other document.

(3) **WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE:** My Agent's authority becomes effective when my primary care physician or my currently treating physician determines I lack the capacity to make my own health-care decisions. When I want my agent to make decisions about providing, withholding or withdrawing a life-sustaining procedure, my agent's authority shall become effective only upon a determination that I lack capacity and am in a qualifying condition. I am in a qualifying condition if I am permanently unconscious or terminally ill or suffer from a serious illness or frailty that may cause me to die within the next year. When the condition in question is "permanently unconscious," the determination of qualifying condition must be made by my attending physician and by at least 1 other physician who shall be a board-certified neurologist and/or neurosurgeon.

(4) **AGENT'S OBLIGATION:** My Agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes, to the extent they are known to my Agent. To the extent that my wishes are unknown, my Agent shall make health-care decisions for me in accordance with what my Agent determines to be in my best interest. In determining my best interest, my Agent shall consider my personal values to the extent known to my Agent.

NOTE: For your advance health-care directive to be effective, you must sign the page titled Administrative Provisions and your witnesses must sign the Statement of Witnesses.

(5) AUTHORIZATION TO RELEASE MEDICAL INFORMATION: Effective:

(Initial ONE only)

_____ effective immediately notwithstanding the provisions of paragraph (3) above,

_____ effective when my agent's authority becomes effective under the provisions of paragraph 3 above,

and continuously until my death or revocation by a writing signed by me or someone authorized to make health-care decisions for me, I authorize and request any physician, health-care professional, health-care provider, and medical care facility (collectively, "health-care providers") to provide to my Agent information, oral or written, relating to my physical and mental condition and the diagnosis, prognosis, care, and treatment thereof upon the request of my Agent I have appointed under this instrument, including, but not limited to, health information as defined and described in the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 2024, generally referred to as "HIPAA"), the regulations promulgated thereunder and any other state or local laws and rules. Information disclosed by a health-care provider may be redisclosed and may no longer be subject to the privacy rules provided by Section 164 of Title 45 of the Code of Federal Regulations. It is my intent by this authorization for my Agent to be considered a personal representative under privacy regulations related to protected health information and for my Agent to be entitled to all health information in the same manner as if I personally were making the request. This authorization and request shall also be considered a consent to the release of such information under current laws, rules, and regulations as well as under future laws, rules, and regulations and amendments to such laws, rules, and regulations to include but not be limited to the express grant of authority to personal representatives as provided by Regulation Section 164.502(g) of Title 45 of the Code of Federal Regulations and the medical information privacy laws and regulations.

PART 2: END – OF – LIFE DECISIONS

(OPTIONAL—If you DO NOT wish make known your wishes, at this time, regarding end-of-life treatment, cross out all of Part 2 and skip to Part 3)

If you do not complete any part of Part 2, the agent appointed under Part 1, if any, will have the power to make all medical decisions for your benefit.

This form offers you ability to specify how you wish to be treated if you are diagnosed with one or more of three "Qualifying Conditions."

"Qualifying condition" means the existence of one or more of the following conditions in the patient, certified in writing in the patient's medical record by the attending physician and by at least one other physician who, when the condition in question is "permanently unconscious" shall be a board-certified neurologist and/or neurosurgeon:

(1) "Permanently unconscious" or "permanent unconsciousness" means a medical condition that has existed for at least 4 weeks and that has been diagnosed in accordance with currently

NOTE: For your advance health-care directive to be effective, you must sign the page titled Administrative Provisions and your witnesses must sign the Statement of Witnesses.

accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma.

(2) "Terminal condition" means any disease, illness or condition sustained by any human being for which there is no reasonable medical expectation of recovery and which, as a medical probability, will result in the death of such human being regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes.

(3) "Serious illness or frailty" means a condition based on which the health-care practitioner would not be surprised if the patient died within the next year.

About your options: It is important to read each option fully before **choosing**. Please note that you may to choose only one option under each qualifying condition but you may choose a different option under a different qualifying condition. You will also have the opportunity to write-in any other medical instructions.

Qualifying Condition: Terminally Ill.

After you have read all options, write your initials on the line next to the option you have selected that represents your choice for treatment instructions. You may only select one option.

_____ **Option 1: My Agent will make decisions on my behalf:** In the event I become **terminally ill** and I am unable to understand, make or communicate my wishes, I direct that my Agent make all medical decisions on my behalf.

_____ **Option 2: Prolong Life:** In the event I become **terminally ill** and I am unable to understand, make or communicate my wishes, I direct that my life be prolonged as long as possible using all possible treatments within the limits of generally accepted health-care standards, with the following exceptions (initial those treatments – if any – you do not want, even if they could prolong your life):

I DO **NOT** WANT the treatments initialed below:

- _____ heart-lung resuscitation (CPR)
- _____ ventilator (breathing machine)
- _____ dialysis (kidney machine)
- _____ surgery
- _____ blood transfusions
- _____ chemotherapy or radiation treatment
- _____ artificial nutrition or hydration through a conduit (tube feeding)
- _____ antibiotics

NOTE: For your advance health-care directive to be effective, you must sign the page titled Administrative Provisions and your witnesses must sign the Statement of Witnesses.

_____ **Option 3: Do not Prolong Life:** In the event I become **terminally ill** and am unable to understand, make or communicate my wishes, I direct that no life sustaining measures be taken, with the following exceptions (initial those treatments – if any – you do want, even if they could sustain your life):

I **DO WANT** the treatments initialed below:

- _____ heart-lung resuscitation (CPR)
- _____ ventilator (breathing machine)
- _____ dialysis (kidney machine)
- _____ surgery
- _____ blood transfusions
- _____ chemotherapy or radiation treatment
- _____ artificial nutrition or hydration through a conduit (tube feeding)
- _____ antibiotics

Qualifying Condition: Permanently Unconscious

After you have read all options, write your initials on the line next to the option you have selected that represents your choice for treatment instructions. You may only select **ONE** option.

_____ **Option 1: My Agent will make decisions on my behalf:** In the event I become **permanently** unconscious and I am unable to understand, make or communicate my wishes, I direct that my Agent make all medical decisions on my behalf.

_____ **Option 2: Prolong Life:** In the event I become **permanently unconscious** and am unable to understand, make or communicate my wishes, I direct that my life be prolonged as long as possible using all possible treatments within the limits of generally accepted health-care standards, with the following exceptions (initial those treatments -- if any -- you do not want, even if they could prolong your life):

I DO **NOT** WANT the treatments initialed below:

- _____ heart-lung resuscitation (CPR)
- _____ ventilator (breathing machine)
- _____ dialysis (kidney machine)
- _____ surgery
- _____ blood transfusions
- _____ chemotherapy or radiation treatment
- _____ artificial nutrition or hydration through a conduit (tube feeding)
- _____ antibiotics

_____ **Option 3: Do Not Prolong Life:** In the event I become **permanently unconscious** and am unable to understand, make or communicate my wishes, I direct that no life sustaining measures be taken, with the following exceptions (initial those treatments -- if any -- you do want, even if they could sustain your life):

NOTE: For your advance health-care directive to be effective, you must sign the page titled Administrative Provisions and your witnesses must sign the Statement of Witnesses.

I DO WANT the treatments initialed below:

- _____ heart-lung resuscitation (CPR)
- _____ ventilator (breathing machine)
- _____ dialysis (kidney machine)
- _____ surgery
- _____ blood transfusions
- _____ chemotherapy or radiation treatment
- _____ artificial nutrition or hydration through a conduit (tube feeding)
- _____ antibiotics

Qualifying Condition 3: Serious Illness or Frailty.

Note. Whether you elect to complete this section of Part 2 or not, when you develop a “serious illness or frailty” as defined at the beginning of this Part 2, you or if you are unable, your agent under Part 1, can meet with your qualified health-care provider and execute a Delaware Medical Order for Life Sustaining Treatment which will create a medical order specifying your wishes for life sustaining treatment.

After you have read all options, **write your initials** on the line next to the option you have selected that represents your choice for treatment instructions. You may only select **ONE** option.

_____ **Option 1: My Agent will make decisions on my behalf:** In the event I have a “**serious illness or frailty**” and I am unable to understand, make or communicate my wishes, I direct that my Agent make all medical decisions on my behalf.

_____ **Option 2: Prolong Life:** In the event I have a “**serious illness or frailty**” and I am unable to understand, make or communicate my wishes, I direct that my life be prolonged as long as possible using all possible treatments within the limits of generally accepted health-care standards, with the following exceptions (initial those treatments -- if any -- you **do not want**, even if they could prolong your life):

I DO **NOT** WANT the treatments initialed below:

- _____ heart-lung resuscitation (CPR)
- _____ ventilator (breathing machine)
- _____ dialysis (kidney machine)
- _____ surgery
- _____ blood transfusions
- _____ chemotherapy or radiation treatment
- _____ artificial nutrition or hydration through a conduit (tube feeding)
- _____ antibiotic

_____ **Option 3: Not to Prolong Life:** In the event I have a “**serious illness or frailty**” and I am unable to understand, make or communicate my wishes, I direct that no life sustaining measures be taken, with the following exceptions (initial those treatments -- if any -- you **do want**, even if they could sustain your life):

NOTE: For your advance health-care directive to be effective, you must sign the page titled Administrative Provisions and your witnesses must sign the Statement of Witnesses.

I **DO WANT** the treatments initialed below:

- _____ heart-lung resuscitation (CPR)
- _____ ventilator (breathing machine)
- _____ dialysis (kidney machine)
- _____ surgery
- _____ blood transfusions
- _____ chemotherapy or radiation treatment
- _____ artificial nutrition or hydration through a conduit (tube feeding)
- _____ antibiotics

COMFORT CARE

Regardless of the option I chose above regarding end of life decisions. (Initial ONE choice below)

_____ I wish to be treated to relieve pain or provide comfort, and I understand that such treatment might shorten my life or suppress my appetite or breathing.

_____ I do not wish to be treated to relieve pain or provide comfort.

Other Medical Instructions: If you wish to add to the instructions you have given in this Part 2 of your Advance Health-Care Directive, you should do so in the space below:

NOTE: For your advance health-care directive to be effective, you must sign the page titled Administrative Provisions and your witnesses must sign the Statement of Witnesses.

PART 3: ANATOMICAL GIFT DECLARATION

(OPTIONAL—If you DO NOT wish to make anatomical gifts at this time, cross out all of Part 3 and skip to the ADMINISTRATIVE PROVISIONS section below.)

If you wish to make anatomical gifts of your body, organs and/or tissues upon your death, you may indicate your specific desires here I hereby make the following anatomical gift(s) to take effect upon my death.

I give **(initial ONE only)**

- _____ my body
- _____ any needed organs, tissues, or parts
- _____ the following organs, tissues or parts (write in on the line below):

to **(initial ONE only)**

- _____ the physician in attendance at my death
- _____ the hospital in which I die
- _____ the following named physician, hospital, storage bank or other medical institution:

for the following purpose(s) **(initial ALL that apply)**

- _____ any purpose authorized by law
- _____ transplantation
- _____ therapy
- _____ research
- _____ medical education

NOTE: For your advance health-care directive to be effective, you must sign the page titled Administrative Provisions and your witnesses must sign the Statement of Witnesses.

ADMINISTRATIVE PROVISIONS

REVOCATION, REMOVAL, AMENDMENT, OR RESIGNATION: I understand that, if I am mentally competent, I may revoke all or part of this document by writing down my revocation instructions and signing them. I do not need an attorney, health care provider or witnesses to do so, although I understand that it is best to have two witnesses sign after my signature. I further understand that it is best to give a copy of such written revocation instructions to my agents and health care providers. (Note: while you can revoke all or part of this document as described above, adding to your Advance Health Care Directive requires completing a new form or writing signed by two qualified witnesses.)

I understand that I may also revoke this health care directive in any manner that communicates an intent to revoke done in the presence of two competent persons, one of whom is a health care provider. I further understand that any revocation that is not in writing shall be memorialized in writing and signed and dated by both witnesses, and made a part of my medical record.

I understand that, if I have designated my spouse as my agent, a decree of annulment, divorce, dissolution of marriage or a filing of a petition for divorce revokes that designation unless otherwise specified in the decree or in a power of attorney for health care.

I understand that the initiation of emergency treatment shall be presumed to represent a suspension of an advance health-care directive while receiving such emergency treatment.

Also, I understand that, upon written notification to me or to anyone who is caring for me or has custody of me, one or more of my health-care Agents may resign.

EFFECT OF COPY: A copy of this form has the same effect as the original.

SIGNATURE

Having carefully read this document, I understand its purpose and effect, and hereby sign and date below:

(Date)

(Sign your name)

(Print your name)

(Street)

(City, State, Zip Code)

STATEMENT OF WITNESSES

SIGNED AND DECLARED by the above-named declarant as and for his/her written declaration under 16 Del. C. §§ 2502,2503, in our presence, who in his/her presence at his/her request, and in the presence of each other, have hereunto subscribed our names as witnesses, and state:

- A. The Declarant is mentally competent.
- B. That neither of us is prohibited by § 2503 of Title 16 of the Delaware Code from being a witness. Neither of us:
1. Is related to the declarant by blood, marriage, or adoption;
 2. Is entitled to any portion of the estate of the declarant under any will of the declarant or codicil thereto then existing nor, at the time of the executing of the advance health-care directive, is so entitled by operation of law then existing;
 3. Has, at the time of the execution of the advance health-care directive, a present or inchoate claim against any portion of the estate of the declarant;
 4. Has a direct financial responsibility for the declarant's medical care;
 5. Has a controlling interest in or is an operator or an employee of a health-care institution in which the declarant is a patient or resident; or
 6. Is under eighteen years of age.
- C. That if the declarant is a resident of a sanitarium, rest home, nursing home, boarding home or related institution, one of the witnesses, _____, is at the time of the execution of the advance health-care directive, a patient advocate or ombudsman designated by the Department of Health and Social Services or the Public Guardian.

Witness

(Print name)

(Address)

(City, State, Zip Code)

(Signature of Witness)

(Date)

Witness

(Print name)

(Address)

(City, State, Zip Code)

(Signature of Witness)

(Date)

You do not need to have this form notarized, but notarization may enhance its effectiveness in other states.

(Optional Notarization)

Sworn and subscribed to me this _____ day of _____, 20_____.

My term expires: _____

(Notary)

CHAPTER 12

FORM 6: DELAWARE MEDICAL ORDERS FOR SCOPE OF TREATMENT

FORM SAYS STARTING IMMEDIATELY DO NOT TRY SOME HEALTH CARE

This form (often called the “DMOST” form) lets a person do serious step of saying starting immediately don’t try any treatments a person can select in the form such as cardio-pulmonary resuscitation (CPR). The form is short and can be read fast (like by paramedics) and is often used by a person outside a facility, but it can be used inside places too. This book’s form is a standard form issued by the state of Delaware. Some other states call this form the “Physician Orders” form. The DMOST form has mostly replaced the separate “Do-Not-Resuscitate” form which can still be used but just covers resuscitation.

FORM SAYS TO IMMEDIATELY NO LONGER TRY CERTAIN HEALTH CARE

In the form a person can say starting immediately certain medical care shouldn’t be tried 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 proper. Health personnel can help explain the form and options to a person. The main thing the form does is says don’t try “resuscitation” to restart or help the heart or breathing, which includes cardio-pulmonary resuscitation (CPR) and also electric shocks (defibrillation) to help the heart. There are other treatment options the form can say to not try, like tube feeding and mechanical ventilation. A doctor usually helps explain the form. Of course a person with capacity still thinking OK can override the form by verbally requesting care or just not showing the form to paramedics or others. If a person falls ill even if they have done this form they are still usually taken to get pain relief and 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 to use on 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 keep copies handy for themselves or family to show to paramedics and others who may want to try 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 or necklace that doctors can help order. To cancel the form usually a person just tells all places that saw the form that it is canceled.

DELAWARE MEDICAL ORDERS FOR SCOPE OF TREATMENT (DMOST)

- FIRST, follow the orders below. THEN contact physician or other health-care practitioner for further orders, if indicated.
- The DMOST form is voluntary and is to be used by a patient with serious illness or frailty whose health care practitioner would not be surprised if the patient died within next year.
- Any section not completed requires providing the patient with the full treatment described in that section.
- Always provide comfort measures, regardless of the level of treatment chosen.
- The Patient or the Authorized Representative has been given a plain-language explanation of the DMOST form.
- The DMOST form must accompany the patient at all times. It is valid in every health care setting in Delaware.

Print Patient's Name (last, first, middle)	Date of Birth	last four digits of SSN	Gender
Patient's Address		Phone Number	

A	Goals of Care (see reverse for instructions. This section does not constitute a medical order.)		
B	Cardiopulmonary Resuscitation (CPR) <i>Patient has no pulse and/or is not breathing</i> ☐ Attempt resuscitation/CPR. ☐ Do not attempt resuscitation/DNAR.		
C	Medical Interventions: <i>Patient is breathing and/or has a pulse.</i> ☐ Full Treatment: Use all appropriate medical and surgical interventions, including intubation and mechanical ventilation in an intensive care setting, if indicated to support life. Transfer to a hospital, if necessary. ☐ Limited Treatment: Use appropriate medical treatment, such as antibiotics and IV fluids, as indicated. May use oxygen and noninvasive positive airway pressure. Generally avoid intensive care. ☐ Transfer to hospital for medical interventions. ☐ Transfer to hospital only if comfort needs cannot be met in current setting. ☐ Treatment of Symptoms Only/Comfort Measures: Use any medications, including pain medication, by any route, positioning, wound care, and other measures to keep clean, warm, dry, and comfortable. Use oxygen, suctioning, and manual treatment of airway obstruction as needed for comfort. Use antibiotics only to promote comfort. Transfer only if comfort needs cannot be met in current location. ☐ Other Orders: _____		
D	Artificially Administered Fluids and Nutrition: <i>Always offer food/fluids by mouth if feasible and desired.</i> ☐ Long-term artificial nutrition ☐ Defined trial period of artificial nutrition: Length of trial: _____ Goal: _____ ☐ No artificial nutrition ☐ hydration only ☐ none (check one box)		
E	Orders Discussed With: ☐ Patient _____ ph.# _____ ☐ Guardian ☐ Surrogate (per DE Surrogacy Statute) _____ Printed Name & phone number ☐ Other ☐ Agent under healthcare POA/or AHCD _____ ☐ Parent of a minor _____ Signature Print Name of Authorized Representative Relation to Patient Address Phone # _____ may _____ If I lose capacity, my Authorized Representative _____ change or void this DMOST _____ _____ may not _____ Patient Signature		
F	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px; vertical-align: top;"> SIGNATURES: Patient/Authorized Representative/Parent (mandatory) <i>I have discussed this information with my Physician / APRN / PA</i> Signature _____ Date _____ If authorized representative signs, the medical record must document that a physician has determined the patient's incapacity & the authorized representative's authority, in accordance with DE law. </td> <td style="width: 50%; padding: 5px; vertical-align: top;"> Physician / APRN / PA Signature _____ Date _____ Time _____ Print Name _____ Print Address _____ License Number _____ Phone # _____ </td> </tr> </table>	SIGNATURES: Patient/Authorized Representative/Parent (mandatory) <i>I have discussed this information with my Physician / APRN / PA</i> Signature _____ Date _____ If authorized representative signs, the medical record must document that a physician has determined the patient's incapacity & the authorized representative's authority, in accordance with DE law.	Physician / APRN / PA Signature _____ Date _____ Time _____ Print Name _____ Print Address _____ License Number _____ Phone # _____
SIGNATURES: Patient/Authorized Representative/Parent (mandatory) <i>I have discussed this information with my Physician / APRN / PA</i> Signature _____ Date _____ If authorized representative signs, the medical record must document that a physician has determined the patient's incapacity & the authorized representative's authority, in accordance with DE law.	Physician / APRN / PA Signature _____ Date _____ Time _____ Print Name _____ Print Address _____ License Number _____ Phone # _____		

DIRECTIONS FOR HEALTH-CARE PROFESSIONALS

COMPLETING A DMOST FORM

- Must be signed by a Licensed Physician, Advance Practice Registered Nurse, or Physician's Assistant.
- Use of original form is highly encouraged. Photocopies and faxes of signed DMOST forms are legal and valid.
- Any incomplete section of a DMOST form indicates the patient should get the full treatment described in that section.

REVIEWING A DMOST FORM -- It is recommended that a DMOST form be reviewed periodically, especially when:

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

MODIFYING AND VOIDING INFORMATION ON A COMPLETED DMOST FORM

A patient with decision-making capacity can void a DMOST form at any time in any manner that indicates an intent to void.

Any modification to the form voids the DMOST form. A new DMOST form may be completed with a health care practitioner. Forms are available online at www.delaware.gov/.

SECTION A This section outlines the specific goals that the patient is trying to achieve by this treatment plan. Health care professionals shall share information regarding prognosis with the patient in order to assist the patient in setting achievable goals. Examples may include:

- Longevity, cure, remission or better quality of life
- To live long enough to attend an important event (wedding, birthday, graduation)
- To live without pain, nausea, shortness of breath or other symptoms
- Eating, driving, gardening, enjoying time with family, or other activities

SECTION B This is a medical order. Mark a selection for the patient's preferences regarding CPR.

SECTION C This is a medical order. When "limited treatment" is selected, also indicate whether the patient prefers or does not prefer transfer to a hospital for additional care.

- IV medication to enhance comfort may be appropriate treatment for a patient who has indicated "symptom treatment only."
- Non-invasive positive airway pressure includes continuous positive airway pressure (CPAP) and bi-level positive airway pressure (Bi-PAP).
- The patient will always be provided with comfort measures.
- Patients who are already receiving long-term mechanical ventilation may indicate treatment limitations on the "Other Orders" line.

SECTION D This is medical order. Mark a selection for the patient's preferences regarding nutrition and hydration. Check one box.

- Oral fluids and nutrition should always be offered if feasible and consistent with the goals of care.

SECTION E This section documents with whom the medical orders were discussed, the name of any healthcare professional who assisted in the completion of the Form, the name of any authorized representative and if the authorized representative may not modify/void the Form.

SECTION F To be valid, all information in this section must be completed.

HIPAA PERMITS DISCLOSURE OF DMOST FORMS TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY FOR TREATMENT.

SEND FORM WITH PATIENT WHENEVER MOVED TO A NEW SETTING

Faxed, Copied, or Electronic Versions of the Form are legal and valid.

Delaware Medical Orders for Scope of Treatment (DMOST)

DMOST is a process for documenting treatment choices. The DMOST form is voluntary. It is a portable, standardized Medical Order that will be recognized and followed by Delaware health care providers.

The DMOST conversation is an opportunity to understand the likely course of your health and medical condition, so that you may make informed choices that are appropriate and reflect what you want. If you choose, you may invite loved ones to join this conversation.

Q. What is DMOST?

- A. The Delaware Medical Orders for Scope of Treatment (DMOST) form is a portable medical order form. It allows you to make choices about life-sustaining treatments, including among other treatments, CPR (resuscitation) and artificial nutrition. You may request full treatment, limited treatment, or comfort care only.

Q. Who is it for?

- A. A DMOST form can be used by a person with a serious illness or frailty, whose health-care practitioner would not be surprised if they died within the next year.

Q. When should it be discussed and signed? Who signs it?

- A. A DMOST form is completed after a conversation you have with a health care practitioner. It is signed by you and a physician (MD or DO), an advanced practice registered nurse (APRN), or a physician assistant (PA). The physician/APRN/PA signature makes the choices into portable medical orders.

Q. Who is required to follow the wishes documented on the DMOST form?

- A. These orders will be followed by health care providers in any setting (ambulance, long-term care facility, emergency room, hospital, hospice, home, assisted living facility, etc.). It travels with you and is honored when you move to a new setting.

Q. Can someone else make DMOST decisions for me?

- A. You make health-care decisions for yourself as long as you have decision-making capacity. You have the right to change your authorized representative at any time while you have decision-making capacity.

If a physician determines that a person lacks decision-making capacity, an authorized representative can sign a DMOST form on behalf of that person. A DMOST form does not change the decision-maker designated by an Advance Health Care Directive, a Health Care Power of Attorney document, a guardian of person appointed by a Court, or Delaware law on health care surrogates.

If you have capacity and complete a DMOST form, you can sign on the form saying that if you lose capacity, your authorized representative cannot void the form you signed.

Q. What if I change my mind?

- A. If your condition or your choices change, you or your authorized representative should void (cancel) your DMOST form and request a new DMOST be completed with your new choices. You can void a DMOST form if you change your mind but do not want to create a new one. You may not make any changes to the content of the DMOST form. If you want to change your DMOST form you must void your previous form and complete a new one with your health-care practitioner. If your DMOST form does not agree with your advance directive, the most recent document will be followed.

Q. Must I do this?

- A. The DMOST form is always voluntary and can be voided at any time. A Health care organization is prohibited from requiring you to complete a DMOST form for any reason, including as part of a person's admission to a health care facility.

It is important to understand that this form contains medical orders. It will be followed by health care providers. For example, if you choose "Do Not Attempt Resuscitation", and your heart stops, no attempt will be made to restart your heart. If you choose "Intubate/Use Artificial ventilation", then you may be placed on a breathing machine with a tube in your throat and transferred to an intensive care setting in a hospital.

Q. What will happen to my choices if I travel out of state?

- A. Many states, including all the states in our region, currently use a form similar to the DMOST form. Forms from those states which are valid under the Delaware Law will be honored in Delaware. DMOST forms will be honored in other states which have reciprocity.

CHAPTER 13

FORM 7: DURABLE PERSONAL 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 many other things. Many people call this form a "Financial Power Of Attorney". This book's form is a statutory form found in state law at 49A Del. Code § 301 for people to find and use if they ever want to. The form is called "Durable" since it still has power if the person who did the form is ever incapacitated (like by inability to stay conscious, be rational, or communicate).

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, or a friend. The form can avoid need for legal options like a Guardianship of an adult set up by a judge. The person giving power is called the "Principal" and the person getting power is called "Agent" or sometimes "Attorney in Fact". A 2nd person can be named to later act if needed but this is rarely needed. This form can help in many ways, like if a person is sick or busy it can let someone else pay bills, use accounts, buy or sell items, borrow, hire people, sign contracts, and get records. Most people let the form be effective immediately to avoid the risk of a bank or other party delaying and needing proof of things. A person who isn't incapacitated can overrule or fire their Agent at any time. The form also lets a person say who'd they prefer as Guardian if a judge ever later finds this needed.

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

A person can initial some boxes to say which of more normal powers are given in the "General Authority" part of the form. Most people give all these powers. Then later in the form is the "Specific Authority" part of the form, and in this part some more risky and less often needed powers can be given, and most people skip all these powers. Instructions can be written to follow but most people after naming an Agent skip giving instructions since if these are unclear a bank or others may delay or refuse to obey an Agent.

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 AND ALSO ON FIRST PAGE

A person must sign the form in front of a notary who then notarizes it. Later page 1 also must be signed. When completed often the form goes to the Agent to use if needed. To cancel the form a person usually tells the Agent and takes back copies and maybe tells places that saw the form. Later banks may ask the Agent do the Agent's Certification which is the form's last page. If ever an Agent signs a contract using the form they should sign like, for example: "John Alan Smith signing as Agent under a Power of Attorney for Ann Eve Hill".

DELAWARE DURABLE PERSONAL POWER OF ATTORNEY

(Delaware Code § 49A-301)

DURABLE PERSONAL POWER OF ATTORNEY FORM NOTICE TO PRINCIPAL

As the person signing this durable power of attorney you are the Principal.

The purpose of this power of attorney is to give the person you designate (your “Agent”) broad powers to handle your property, which may include powers to sell, dispose of, or encumber any real or personal property without advance notice to you or approval by you.

This power of attorney does not authorize your Agent to make health-care decisions for you.

Unless you specify otherwise, your Agent’s authority will continue even if you become incapacitated, or until you die or revoke the power of attorney, or until your Agent resigns or is unable to act for you. You should select someone you trust to serve as your Agent.

This power of attorney does not impose a duty on your Agent to exercise granted powers, but when powers are exercised, your Agent must use due care to act for your benefit and in accordance with this power of attorney.

Your Agent must keep your funds and other property separate from your Agent’s funds and other property.

A court can take away the powers of your Agent if it finds your Agent is not acting properly.

The powers and duties of an Agent under a durable power of attorney are explained more fully in Delaware Code, Title 12, Chapter 49A, Section 49A-114 and Sections 49A-201 through 49A-217.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

Principal Signature

Date

DURABLE PERSONAL POWER OF ATTORNEY FORM INSTRUCTIONS

As the person completing this form, you are the Principal. This form gives another person the power to act on your behalf. The other person is your Agent.

This form allows you to designate: (1) one Agent at a time and up to two Agents in succession; (2) two or more Agents who may act independently of each other (Concurrent Agents); or (3) two or more Agents who must act together (Joint Agents).

If your Agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor Agent(s).

IF YOU HAVE QUESTIONS ABOUT THIS POWER OF ATTORNEY OR THE AUTHORITY YOU ARE GRANTING TO YOUR AGENT(S), YOU SHOULD SEEK LEGAL ADVICE BEFORE COMPLETING AND SIGNING THIS FORM.

The following form may, but need not, be used to create a durable personal power of attorney. The other sections of this chapter govern the effect of this or any other writing used to create a durable personal power of attorney. A durable personal power of attorney that varies from the following form shall not be deemed to be invalid based solely upon such variance.

DESIGNATION OF AGENT

I, _____, name the following person(s) as my
(Name of Principal)

Agent(s):

Name: _____ Phone Number: _____

Address: _____

DESIGNATION OF ADDITIONAL OR SUCCESSOR AGENTS (OPTIONAL)

Name: _____ Phone Number: _____

Address: _____

Name: _____ Phone Number: _____

Address: _____

If I have named more than one Agent above, I intend for those Agents to (initial one option):

_____ Act successively, one after the other

_____ Act concurrently, independent of each other

_____ Act jointly, not independent of each other

EFFECTIVE DATE

You must sign ONE of these two choices:

_____ (Sign here if this is your choice) This power of attorney is **effective immediately**, and shall not be effected by my subsequent incapacity.

_____ (Sign here if this is your choice) This power of attorney is **effective only if and while I am incapacitated** as determined under 12 Del. C. § 49A-109(c).

GRANT OF GENERAL AUTHORITY

I grant my Agent and any successor Agent general authority to act for me with respect to the following powers described in more detail as defined in the Durable Personal Power of Attorney Act, Delaware Code, Title 12, Chapter 49A.

You should READ the terms of each category of power or authority before granting any of them to your Agent. A full explanation of each power or authority is in the Delaware Code. The Delaware Code is available online. Search: Delaware Code, Title 12, Chapter 49A, and then go to the number next to the category. Example: Real Property, Section (§) 49A-204. The Delaware Code may also be available at your local library.

INITIAL each category you want to include in the Agent's general authority.

CROSS OUT each category you do not want to include in the Agent's general authority.

If you do not initial a category listed below, powers associated with that category will NOT be included as part of your Agent's general authority.

- _____ Real Property § 49A-204
- _____ Tangible Personal Property § 49A-205
- _____ Stocks and Bonds § 49A-206
- _____ Commodities and Options § 49A-207
- _____ Banks and Other Financial Institutions § 49A-208
- _____ Operation of Entity or Business § 49A-209
- _____ Insurance and Annuities § 49A-210
- _____ Estates, Trusts, and Other Beneficial Interests § 49A-211
- _____ Claims and Litigation § 49A-212
- _____ Personal and Family Maintenance § 49A-213
- _____ Benefits from Governmental Programs or Civil or Military Service § 49A-214
- _____ Retirement Plans § 49A-215
- _____ Taxes § 49A-216
- _____ Gifts (12 Del. C. § 49A-217)

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

PROCEED WITH CAUTION

Giving your Agent any of the following powers will give your Agent the authority to take actions that could significantly reduce your property or change how and to whom your property is distributed at your death.

You should READ the terms describing each power before granting any to your Agent.

INITIAL each power you want to include in the Agent's authority.

CROSS OUT each power you do not want to include in the Agent's authority.

If you do not initial a power listed below, it will NOT be included as part of your Agent's specific authority.

- _____ Create, amend, revoke, or terminate an inter vivos trust
- _____ Make a gift in excess of the limitations in the Durable Personal Power of Attorney Act, 12 Del. C. § 49A-217
- _____ Create or change rights of survivorship
- _____ Create or change a beneficiary designation
- _____ Delegate authority granted under the power of attorney when all successor Agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve
- _____ Exercise fiduciary powers that the Principal has authority to delegate
- _____ Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from estate, trust, or other beneficial interest

NOMINATION OF GUARDIAN

If a **guardian of my property** needs to be appointed for me by a court (INITIAL option):

- _____ I nominate the agent(s) whom I named in this form in the order designated to act as guardian.
- _____ I nominate the following to be guardian in the order designated:
(insert names) _____.
- _____ I do not nominate anyone to be guardian.

GOVERNING LAW

This Durable Personal Power of Attorney shall be governed by, and construed in accordance with, the laws of the State of Delaware.

RELIANCE ON THIS POWER OF ATTORNEY

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

SIGNATURE AND ACKNOWLEDGMENT

IF YOU HAVE QUESTIONS ABOUT THIS POWER OF ATTORNEY OR THE AUTHORITY YOU ARE GRANTING TO YOUR AGENT(S), YOU SHOULD SEEK LEGAL ADVICE BEFORE SIGNING THIS FORM.

PRINCIPAL:

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this _____ day of _____, 20__.

Principal Signature

Print Principal Name

WITNESS:

I, the witness, swear that I am not related to the Principal by blood, marriage, or adoption; and that I am not entitled to any portion of the estate of the Principal under the Principal's current will or codicil, or under any current trust instrument of the Principal

Witness Signature

Print Witness Name

STATE OF DELAWARE)
) SS.
COUNTY OF _____)

This Durable Power of Attorney was acknowledged before me by _____ this _____ day of _____, 20__.

Notary Public Signature

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

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

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

Except as otherwise provided in the power of attorney, you must also:

- (1) not act for your own benefit;
- (2) avoid conflicts that would impair your ability to act in the Principal's best interest;
- (3) act with care, competence, and diligence;
- (4) keep a record of all receipts, disbursements, and transactions made on behalf of the Principal;
- (5) cooperate with any person who has authority to make health-care decisions for the Principal; and
- (6) not act in a manner inconsistent with the Principal's testamentary plan.

Termination of Agent's Authority

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

- (1) death of the Principal;
- (2) the Principal's revocation of the power of attorney or your authority;
- (3) the occurrence of a termination event stated in the power of attorney;
- (4) the purpose of the power of attorney is fully accomplished; or
- (5) an action is filed with a court for your separation, annulment, or divorce from the Principal, unless the Principal otherwise provided in the power of attorney that such action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Durable Personal Power of Attorney Act, Delaware Code, Title 12, Chapter 49A. If you violate the Durable Personal Power of Attorney Act, Delaware Code, Title 12, Chapter 49A, or act outside the authority granted, you may be liable for any damages caused by your violation.

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

(may be done later upon request of a bank or other party)

AGENT'S CERTIFICATION

I, _____ (Name of Agent), have read the attached durable personal power of attorney and I am the person identified as the Agent or identified as the Agent for the Principal. To the best of my knowledge this power has not been revoked. I hereby acknowledge that, when I act as Agent, I shall:

Act in accordance with the principal's reasonable expectations to the extent actually known to me and, otherwise, in the Principal's best interest;

Act in good faith;

Act only within the scope of authority granted in the personal power of attorney; and

To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

In addition, in the absence of a specific provision to the contrary in the durable personal power of attorney, when I act as Agent, I shall:

Keep the assets of the Principal separate from my assets;

Exercise reasonable caution and prudence; and

Keep a full and accurate record of all actions, receipts and disbursements on behalf of the Principal.

Agent's Signature

Date

CHAPTER 14

FORM 8: POWER OF ATTORNEY FOR 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. Note, unlike most states Delaware has no state law clearly saying giving power over a child this way is OK, so not all doctors, schools, and other persons may obey this form. But many people still use this form if leaving a child with someone, and it is felt having something on paper is better than having nothing. People who want to act more officially can file Minor Guardianship papers with a judge to have them officially give power over a child to a person officially approved by a judge.

FORM CAN GIVE POWER TO SOMEONE OVER CHILD UNDER AGE 18

This form lets a parent say they are sharing power over a child under 18 with someone they name. 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 later 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 a babysitter, daycare, short family visits, or times a parent can come quickly. People with more than 2 children can just do multiple forms. Power over health care and school is normally given by this form, but no power to agree to adoption or marriage or any permanent change is given. The person who did the form can fire or overrule the person they named.

PERSON SIGNS FORM IN FRONT OF A NOTARY AND ALSO ON FIRST PAGE

The person doing the form must sign it in front of a notary who then notarizes it. Some people modify the form to have room for a 2nd parent to also fill out and sign this form, and this tends to make doctors, schools, and others more likely to follow the form. A guardian not a parent can also use this form but they should first modify it to show a guardian not a parent is doing this form. To cancel the form a person usually tells the Agent and takes back all copies, and maybe also tells all places that were shown the form that it's cancelled.

POWER OF ATTORNEY FOR MINOR CHILD

1. Identification of Parent and Child.

I, _____, currently residing at _____
and having a phone number of _____ am
the parent of the minor child named _____
born on _____. All references in this document to "the child"
are to this child. This Power of Attorney is effective immediately.

2. Designation of Agent.

I appoint _____ with a phone number
of _____ as attorney-in-fact for the child.

3. Powers Granted.

I delegate power and authority I have over the child to this attorney-in-fact, including they may do and decide anything I could do if I were personally present.
I do not delegate or give other power and authority, such as over my property and money. Powers given include but are not limited to the child's health care, surgery, medical treatment, medical tests and labs, school, extra-curricular activities, home issues, recreation, schedule, discipline, clothing, power to see and request records even if confidential, and food and drink. Powers delegated do not include the power to terminate a parental relationship or to consent to marriage or adoption.

Signed on the _____ day of _____, 20____.

Signature of Principal: _____

Notary:

STATE OF DELAWARE

COUNTY OF: _____

This document was acknowledged before me on: _____ (Date)
by _____ (Name of Principal).

Signature of Notary: _____

My commission expires: _____

CHAPTER 15

FORM 9: DECLARATION OF DISPOSITION OF LAST REMAINS

LETS PERSON BE NAMED AND INSTRUCTIONS GIVEN TO HANDLE DEAD BODY

This form lets someone be named by a person to control their body after death (their “remains”) and related things like funeral, burial, cremation, ceremonies, and buying things for all this, and also if wanted lets instructions be given on what to do. This book’s form is a statutory form found at 12 Del. C. § 265.

FORM CAN NAME PERSON TO CONTROL DEAD BODY AND RELATED ISSUES

In the form a person doing the form (called the “Declarant”) can name someone (called the “Designee”) to control things with their dead body and related issues like funeral, burial, cremation, and ceremonies. If this form isn’t done then under state law control of all this is by the closest family member (in order this means a spouse, adult children, parents, then siblings). Also instructions can be written down about these things, but many people skip this and just trust their Designee and/or family to do what the person wanted. But people do this form rarely, like if it seems family would do a bad job, like they may be too upset while mourning, be bad with money, or do unwanted things. The form has room to name a second person to act in case the first person doesn’t, but this is rarely a problem and usually skipped. Payment for burial, cremation, ceremonies, and related things will come from pre-paid funeral accounts, insurance, and a dead person’s money and property. A person’s Executor and family are legally required to help arrange payment for these things including what a Designee orders done if a dead person’s estate can afford it.

FORM HAS A FEW QUESTIONS WITH PLACES TO INITIAL AND FILL OUT

In the 1st part of the form a person can initial in 1 of several spots to say where their dead body later should go (the options are 1) buried, 2) cremated, 3) entombed, 4) other, or 5) as Designee later chooses). In the 2nd part of the form a person can initial and write several sentences in some blank spaces to say just which ceremonies to do (the options are a) as Designee later says, b) funeral, and c) memorial service). And in 3rd part a person can give instructions for the person named as Designee and also family to follow, but many people skip giving instructions and trust the Designee and/or family to do what the person wanted. The form has an optional place to give instructions on Organ Donation, but many skip this including because they don’t want to decide this or because doing this in drivers license or state ID paperwork is often easier.

PERSON SHOULD SIGN THE FORM USUALLY IN FRONT OF A NOTARY

A person should sign the form. It is recommended but not required a notary see the form be signed and then notarize and sign too. Once done the form can be given to someone to hold and use when needed, or it can be put in a place where it can be found quickly within a few days of a death (like in a file cabinet, a safe, or desk drawer). Note, instead of this form these funeral and related issues can be handled in a Will.

DECLARATION OF DISPOSITION OF LAST REMAINS

I, _____ (Name of Declarant), being of sound mind and lawful age, hereby revoke all prior declarations, wills, codicils, trusts, powers of appointment, and powers of attorney regarding the disposition of my last remains, and I declare and direct that after my death the following provisions be taken:

1. If permitted by law, my **body** shall be (Initial ONE choice):

_____ Buried. I direct that my body be buried at _____.

_____ Cremated. I direct that my cremated remains be disposed of as follows: _____
_____.

_____ Entombed. I direct that my body be entombed at _____.

_____ Other. I direct that my body be disposed of as follows: _____
_____.

_____ Disposed of as _____ (Name of Designee) shall decide in writing.
If this person is unwilling or unable to act, I nominate _____ (Name of Alternate Designee) as my alternate designee.

2. I request that the following **ceremonial arrangements** be made (initial desired choice or choices):

_____ I request _____ (Name of Designee) make all arrangements for any ceremonies, consistent with my directions set forth in this declaration.
If this person is unwilling or unable to act, I nominate as my alternate designee _____ (Name of Alternate Designee).

_____ Funeral. I request the following arrangements for my funeral: _____

_____.

_____ Memorial Service. I request the following arrangements for my memorial service: _____

_____.

3. Special Instructions. In addition to the instructions above, I request (on the following lines you may make special requests regarding ceremonies or lack of ceremonies: _____

_____ (attach more pages if needed).

Note: Those persons or entities asked to carry out a declarant's intent regarding disposition of last remains and ceremonial arrangements need do so only if the declarant's intent is reasonable under the circumstances. "Reasonable under the Circumstances" may take into consideration factors such as a known prepaid funeral, burial, or cremation plan of the declarant, the size of the declarant's estate, cultural or family customs, the declarant's religious or spiritual beliefs, the known or reasonably ascertainable creditors of the declarant, and the declarant's financial situation prior to death.

I may revoke or amend this declaration in writing at any time. I agree that a third party who receives a copy of this declaration may act according to it. Revocation of this declaration is not effective as to a third party until the third party learns of my revocation. My estate shall indemnify any third party for costs incurred as a result of claims that arise against the third party because of good-faith reliance on this declaration.

I execute this declaration as my free and voluntary act, on _____ (Date).

Declarant's Signature

ORGAN DONATION (OPTIONAL)

The following section regarding organ and tissue donation is optional. To make a donation, initial the option you select and sign below.

In the hope that I might help others, I hereby make an anatomical gift, to be effective upon my death, of:

A. _____ Any needed organs/tissues.

B. _____ The following organs/tissues: _____.

Donor's Signature

NOTARIZATION (OPTIONAL)

State of Delaware

County of _____:

Acknowledged before me by _____ the Declarant on
_____ (Date).

(Stamp or Seal)

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

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

none

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

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

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 I want Delaware state law to apply to this Will and my estate.

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 earlier transfer reduces a Will gift unless I usually called it a loan or 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.

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

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

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 Delaware Uniform Transfers to Minors Act or a similar law anywhere, and may pick the person to be Custodian including themselves.

TESTATOR

IN WITNESS WHEREOF, I, Paul Samuel Maxwell, the Testator, have signed this Will on the 8th day of June, 2022.

Paul Samuel Maxwell

Testator's Signature

WITNESSES

Signed, sealed, and declared by the Testator to be the Testator's Will, in the presence of us the Witnesses, who, at the Testator's request and in the Testator's presence and presence of each other, sign our names acting as witnesses the day and year last stated above.

Eve Mable Rogers

Witness Signature

Eve Mable Rogers, 14 2nd St., Rehoboth Beach, DE 19712

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 (Guardian)
with Many Specific Gifts, Guardian Clause used, and Residue Given By Percentages

LAST WILL AND TESTAMENT

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

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

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

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

I give big oak table to Anne J. Smith.

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

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

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

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

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

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

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

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

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

I give _____ to _____.

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

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

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

b) to 45% to Oscar Elliot Baker, and 45% to Karen Lisa Lundy, 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 Baker as Personal Representative including for me, my Will, and my estate.

6. GUARDIAN. I name, nominate, and appoint Amanda Sue Brubaker my sister to be if needed the Guardian of the Person of any minor child under age 18 of mine and to have care, authority, custody, and other control of them. I also name, nominate, and appoint this same person to be Guardian of the Estate to have care, control, and power over the property, money, and estate of any minor child of mine or other minors (including as Guardian of Property and, also, as Conservator).

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 I want Delaware state law to apply to this Will and my estate.

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 earlier transfer reduces a Will gift unless I usually called it a loan or 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.

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.

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 Delaware Uniform Transfers to Minors Act or a similar law anywhere, and may pick the person to be Custodian including themselves.

TESTATOR

IN WITNESS WHEREOF, I, Paul Brian Baker, the Testator, have signed this Will on the 30th day of December, 20 21.

Paul Brian Baker
Testator's Signature

WITNESSES

Signed, sealed, and declared by the Testator to be the Testator's Will, in the presence of us the Witnesses, who, at the Testator's request and in the Testator's presence and presence of each other, sign our names acting as witnesses the day and year last stated above.

Olivia Joy Pawlenty
Witness Signature

Olivia Joy Pawlenty, 82 Forest Road, Wilmington, DE 19758
Printed Name and Residence of Witness

Roy Felix Pawlenty
Witness Signature

Roy Felix Pawlenty, 82 Forest Road, Wilmington, DE 19758
Printed Name and Residence of Witness

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

LAST WILL AND TESTAMENT

I, John David Smith, of Sussex County, Delaware, 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 Garner Food Shelf in Milltown, Delaware by the lake.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

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

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

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

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

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

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

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 earlier transfer reduces a Will gift unless I usually called it a loan or 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.

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

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

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 Delaware Uniform Transfers to Minors Act or a similar law anywhere, and may pick the person to be Custodian including themselves.

TESTATOR

IN WITNESS WHEREOF, I, John David Smith, the Testator, have signed this Will 21st day of June, 2021.

John David Smith

Testator's Signature

WITNESSES

Signed, sealed, and declared by the Testator to be the Testator's Will, in the presence of us the Witnesses, who, at the Testator's request and in the Testator's presence and presence of each other, sign our names acting as witnesses the day and year last stated above.

John Elliot Potter

Witness Signature

John Elliot Potter, 2 Spruce St, Sherwood, DE 19701

Printed Name and Residence of Witness

Ann Paula Blom

Witness Signature

Ann Paula Blom, 70 Rocky Road, Clarksville, DE 19952

Printed Name and Residence of Witness

Sample Filled Out Form: Self-Proving Affidavit

SELF-PROVING AFFIDAVIT

STATE OF DELAWARE)
) SS.
COUNTY OF SUSSEX)

Before me the subscriber on this day personally appeared, John David Smith, John Elliot Potter, and Ann Paula Blom known to me to be the Testator and the Witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn the Testator named above declared to me and to the Witnesses in my presence that the instrument is the Will of the Testator and that Testator had willingly signed or directed another to sign for the Testator, and that the Testator executed it as a free and voluntary act for the purposes therein expressed; and each of the Witnesses stated to me, in the presence and hearing of the Testator, that the Witness signed the Will acting as witness and that to the best of the Witness' knowledge the Testator was 18 years of age or over, of sound mind and under no constraint or undue influence.

John David Smith
Testator

John Elliot Potter
Witness

Ann Paula Blom

 Witness

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

Signed: *William P. Jefferson*
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: 8-15-2022

SIGNED: John David Smith