

DAVENPORT'S MONTANA WILLS AND ESTATE PLANNING LEGAL FORMS

**written by attorneys
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<u>CHAPTER</u>	<u>TABLE OF CONTENTS</u>	<u>PAGE NUMBER</u>
1	Book Basics And List Of Forms	1
2	Terms, Property Law, And Helpful Information Form	4
3	Basics Of Wills	8
4	Wills Gifts Including Residue Clause	10
5	Debt, Marriage, And Child Issues	15
6	Basic Ideas About Health Care Forms	18
WILL RELATED FORMS		
7	Form 1: Will (Standard)	19
8	Form 2: Will (Guardian)	23
9	Form 3: Self-Proving Affidavit	27
10	Form 4: Tangible Personal Property List	29
11	Form 5: Handwritten Will	31
HEALTH CARE FORMS		
12	Form 6: Health Care Power Of Attorney	33
13	Form 7: Declaration Of Living Will	37
14	Form 8: Provider Orders For Life-Sustaining Treatment	39
GIVING POWER FORMS		
15	Form 9: Statutory Form Power Of Attorney	42
16	Form 10: Power Of Attorney For Care, Custody, And Property Of Minor Child	48
17	Form 11: Authorizing Agent Affidavit For Remains	52
Appendix: Sample Filled Out Forms		54

CHAPTER 1

BOOK BASICS AND LIST OF FORMS

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

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

WILL RELATED FORMS

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

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

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

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

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

HEALTH CARE FORMS

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

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

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

GIVING POWER FORMS

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

Form 10. Power Of Attorney For Care, Custody, And Property Of Minor Child – lets a parent share power with someone over a minor child under age 18 to use if needed including health care and school.

Form 11. Authorizing Agent Affidavit For Remains – lets a person give instructions and if wanted name someone to control issues with their funeral, burial, cremation, and similar matters.

MONTANA LAW ON ESTATE PLANNING COVERS MOST PEOPLE HERE

This book is only for Montana since Estate Planning law and legal documents do vary between states. Usually a state's Estate Planning law applies if a person's primary residence is here (often called "domicile"). Many judges say "residence" occurs if a person lives in a place and for a moment has no clear plans to leave. Later plans to move don't matter till people actually move. Note, people can stay under their previous state's Estate Planning laws after they move from it if people have some plans to leave any new state eventually. For example, people who move to a new state for months or more for travel, school, work projects, or the military often can keep legal ties to their old state. Immigrants here of any kind can do Estate Planning. For health care people often do legal documents to match the state a hospital or other health facility is in.

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

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

THIS BOOK COVERS MAJOR LEGAL IDEAS AND SHOULD SUIT MOST PEOPLE

This book covers the big U.S. legal ideas on Estate Planning and major ways Montana law is a bit different. This book can't cover all issues but should suit almost all people without some strange situations or wishes. Strange situations or wishes that needs more research or a lawyer include: a) strange gift wishes for property and money, b) wealth over \$5 million, c) big medical concerns like extreme age, d) property or money going to a person with a disability or special needs, and e) wish to move or hide assets to qualify for government help.

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

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

ESTATE PLANNING OFTEN IS NOT VITAL AND WORTH SPENDING MUCH ON

Despite what many people think Estate Planning often does not greatly change the costs, taxes, delays, and work involved in these areas, so it often is not vital and worth spending much money and energy on. Benefits seem very low for young people even if they're parents since only about 4% of people die by age 50, and only about 0.13% of children under 18 had both parents die to need big legal help. *See Social Security Tables: Felicitie Bell; Parent Mortality Census SIPP Paper #288.* Instead of costly Estate Planning many people buy life insurance, like some people pay yearly for \$100,000 term life with no exam ("simplified issue").

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”

To be legally valid and enforceable some legal documents need to be “witnessed”, which is someone watching the person doing the form sign and then the witness signs too. Some legal documents need to be “notarized”, which is a person who is a “notary” see signing and then use ink stamp and they sign 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” or “execute” means a person signed it, and “acknowledgment” means a person said a signature was theirs. If a person signs a legal document in a foreign language it is still usually binding.

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

This book skips some possible but less common or less useful documents.

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

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

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

NO FEDERAL, STATE, OR LOCAL TAX IS USUALLY OWED DUE TO A DEATH

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

The Federal Estate And Gift Tax is the only tax that usually applies at the Federal level, and it only starts when a tax credit is used up covering \$13.99 million a person in the year 2025 and later.

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

In rare cases property located in another state that a Montana person owns if the person dies may trigger inheritance or estate taxes in that other state. But this is fairly rare and usually any tax is low.

Life insurance payouts are mostly tax free.

For all these reasons usually Montana people don’t need to worry about additional taxes after a death.

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.

CHAPTER 2

TERMS, PROPERTY LAW, AND HELPFUL INFORMATION FORM

THERE ARE BASIC TERMS AND IDEAS IN ESTATE PLANNING

Some legal terms and ideas are basic to Estate Planning.

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

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

■ A “Will” or “will” (this book uses upper case “W”) is a legal document done to control issues after death. The phrase “Last Will And Testament” is used since a “Testament” long ago was a small document done along with a Will to do some things. If no Will is done a person is described as being “intestate”.

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

■ A person named to handle and do things after someone’s death is usually called an “Executor”, but if a judge has to pick someone they are called an “Administrator”. The term “Personal Representative” covers both these terms and is now the common term used in Montana for a person doing things after a death.

■ A person doing a Will is called “Testator” or “Will maker”. Before about 2000 a woman Testator was called a “Testatrix” and woman Executor called an “Executrix” but this is no longer often said or written.

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

■ “Property” is either: 1) “real property” which is land and buildings (“real estate”), 2) “personal property” which is things not real property, like cash, accounts, stocks, tools, clothes, cars, jewelry, and art, or 3) “fixtures” which are things tied to real property (like fences, posts, lighting, and wired-in appliances).

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

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

■ State law is the “Montana Code”. A law is often called a “statute” or “section” shown by a “§” or “s” mark. State law can be cited many ways, like “Mont. Code § 72-1-135”, “MCA 72-1-135”, or “72-1-135, MCA” (which is sort of backward), or “Montana Code Annotated 72-1-135” (“annotations” are helpful notes put in law books). A legal form written in state law for people to find and use if wanted is usually called a “statutory form”.

“ESTATE” MEANS PROPERTY OF DECEDENT AND ENTITY HOLDING THINGS

First, the “estate” or “probate estate” means all property and money of a dead person that at death or soon after didn’t somehow legally automatically go to new owners. Second, estate is also the word for the temporary entity run by an Executor to do things after a death (it’s like a small corporation). A dead person’s money and things may be renamed or put in an account with an estate name, like “Estate of Max Luke Hud”.

PERSON CAN ONLY GIFT IN WILL WHAT THEY OWN AT DEATH

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

THINGS OWNED IN SPECIAL WAYS MAY LIMIT GIFTING IN WILL

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

- “joint tenant with right of survivorship” or similar legal options, so then property transfers automatically to the other named owners regardless of a Will, which in some states is often how spouses hold their home;
 - papers say a “life estate” exists, so then if life of someone ends the other people in papers get item; and
 - “Trust property” occurs if paperwork made a Trust entity and then property was transferred into it or this is set to occur, so then the Trust papers control where things put in the Trust go after someone’s death.
- Plain “joint ownership” with many people owning a thing can occur if people do joint papers, all agree to it, buy with joint funds, or if a gift was to many. Wills can gift joint property, like “I give my half of boat to Ed Hu”.

NON-PROBATE TRANSFERS THAT HAPPEN AUTOMATICALLY IGNORE A WILL

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

“HELPFUL INFORMATION” FORM CAN TELL FAMILY AND FRIENDS THINGS

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

ESTATE PLANNING HELPFUL INFORMATION

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

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

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

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

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

5. Debts owed by you like credit card, loan, student loan, mortgage, vehicle loan, and accounts payable:

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

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

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

CHAPTER 3

BASICS OF WILLS

WILL LETS “TESTATOR” CONTROL THINGS AFTER DEATH

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

A WILL USUALLY MUST BE SIGNED WITH 2 WITNESSES

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

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

WITNESSES SHOULD BE PEOPLE AT LEAST AGE 18

A person to witness a Will must be at least age 18. It is slightly better but not legally required that witnesses be not very old or live far away like out of state. Though it is allowed it is also preferable a witness not be named in the Will as Executor, Guardian, or to a similar job. Often used as witnesses are friends, family members, workers in an office, or strangers.

IT IS BETTER THAT A WITNESS NOT BE NAMED IN WILL GIFTS

It is better that witnesses to a Will not be named in any Will gifts but unlike some states in Montana law this is legally allowed and does not effect a Will’s validity or the Will gifts. Montana Code § 72-2-525 says in part, “The signing of a will by an interested witness does not invalidate the will or any provision of it”. But to avoid questions or issues often 2 people are chosen to be witnesses who aren’t named in Will gifts.

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

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

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. Montana law lets a person during life deposit a Will at a local court for safekeeping (and withdraw it if wanted) but this is fairly rare, and if this is done usually family should be told so they know to later find the Will at court.

CANCELING OLD WILLS IS USUALLY NOT A PROBLEM

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

MOST WILLS SAY TO SKIP COSTLY BOND FOR EXECUTOR AND OTHERS

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

MOST WILLS SAY FAMILY MAY LATER DO “INFORMAL PROBATE”

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

A WILL NAMES AN EXECUTOR TO DO THINGS AFTER DEATH

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

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

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

In Montana an Executor can ask to be paid a fair wage for the hours they spend on estate work. The law no longer says give an Executor a percentage of the estate as pay for their time, but often Executors when paid hourly end up getting 2-3% of the value of the Estate which usually seems fair. But some Testators don’t want this and put a line in a Will saying don’t pay Executor. In reality many Executors just skip asking for pay to not owe income tax on it and leave more money to carry out Will gifts. Expenses an Executor has like insurance, probate, repairs, mortgage payments, and utilities are paid for with estate money or property. Any lawyer an Executor hires usually is paid hourly or a fixed sum the lawyer and an Executor agree on.

EXECUTOR IS PERSON AT LEAST 18 AND SECOND PERSON RARELY NEEDED

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

CHAPTER 4

WILL GIFTS INCLUDING RESIDUE CLAUSE

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

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

GIFTING IN A WILL USING SIMPLE WORDS OFTEN IS BEST

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

A PERSON IS MOSTLY FREE TO GIFT THEIR THINGS AS WANTED

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

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

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

IN WILL CAN DO “GENERAL GIFTS” LIKE OF MONEY

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

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

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

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

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

CONDITIONS ON WILL GIFTS ARE RARE DUE TO POSSIBLE PROBLEMS

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

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

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

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

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

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

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

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

GIFT BENEFICIARIES CAN GET PERCENTAGE RATHER THAN EQUAL SHARE

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

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

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

AFTER A DEATH FAMILIES OFTEN LET PEOPLE TAKE ITEMS UNOFFICIALLY

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

LATER DIVORCE OR MURDER CANCELS WILL GIFTS

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

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

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

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

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

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

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

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

USUAL RESIDUE CLAUSE HAS 2 PARTS

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

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

EXAMPLE OF 2 PART RESIDUE CLAUSE:

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

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

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

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

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 fully ensure that 1 person or if they later die their descendants will 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 Gallatin County Library, MT", and "I give \$5 to Lob Church, Rex, Texas". People often phone to get a charity's name.

PUTTING DESCRIPTIONS OF ITEMS IN WILL GIFTS IS FAIRLY EASY

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

DESCRIBING REAL PROPERTY IS HARD SO MANY USE RESIDUE OR TITLE

The easier and safer way to gift real property (real estate) at death is: 1) do nothing specific so it's handled by a Will Residue Clause, or 2) have a 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 Salem Road, Bozeman, Montana to Mary Ellen Brown".

Or people can do a blanket gift giving all of a kind of property, like, "I give all real property and fixtures in Ravalli County, Montana to Ann Sue Hill" or "I give all real property and fixtures in any place to Paul Ian Rex".

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

INTESTATE LAW CONTROLS THINGS NOT COVERED BY A WILL

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

State “intestate law” which starts at Montana Code § 72-2-112 says where property and money goes if a person dies with no valid Will. This law mostly gives a dead person’s things to closest still living family. Note, if a person’s child has died then living children of them often get things in their place which is called “representation”. “Descendants” means a person’s children, grandchildren, and great-grandchildren. In the rare cases Montana intestate law applies (like if there is no valid Will) it basically says, in order:

1. If a person left a surviving spouse but no descendants and no parents, then the spouse gets all;
2. If a person left a surviving spouse and descendants who are all from that spouse and the spouse has no other children, then the spouse gets all;
3. If a person left a surviving spouse and descendants who are all from that spouse but the spouse also has some other descendants not shared with the decedent, then the spouse gets the first \$225,000 and 1/2 of the rest of the estate and the decedent’s descendants split the rest;
4. If a person left a surviving spouse and descendants some who are not from the surviving spouse, then the spouse gets the first \$150,000 and 1/2 of the rest of the estate and decedent’s descendants get the rest;
5. If a person left a surviving spouse and parents but no descendants, then the spouse gets the first \$300,000 plus 3/4 of the rest of the estate and the surviving parents of the decedent split the rest;
6. If a person left some surviving descendants but no spouse, then the descendants split the estate (this is divided up “by representation” with children of a dead parent getting the share they’d get if still alive);
7. If a person left some surviving parents but no descendants and no spouse, then the parents split things;
8. If a person left no surviving descendants or spouse or parents, then descendants of decedent’s parents get things (this is decedent’s brothers and sisters or if any are dead the decedent’s nieces and nephews);
9. If a person left no surviving descendants or spouse or parents or descendants of the parents, then things go to certain other close family of the decedent who survive; and
10. If a person leaves none of the above family mentioned above, then things go to the state of Montana which is very rare.

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

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

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

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

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

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

CHAPTER 5

DEBT, MARRIAGE, AND CHILD ISSUES

This chapter covers complex debt, marriage, and child issues, but many 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 property and estate so may affect (in order) the Will Residue, Will general gifts, Will specific gifts, and non-probate transfers. Probate, health care, and funeral debts by law may have priority to be paid first. But for various reasons often not all debts are paid. People should consider how paying debts may use up money or property, leaving less to carry out Will gifts. A spouse and family usually aren't liable at all for decedent's debts unless they guaranteed or co-signed.

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

Most states have "family rights" a decedent's surviving spouse can claim, or if there is no spouse then decedent's children can claim, and this may let them get much before most of decedent's debts are paid and even before Will and other transfers occur. Montana has these rights starting at Montana Code § 72-2-412. First, a surviving spouse or children of a decedent can use the "Exempt Property" right to let them claim \$15,000 of personal property of a decedent like furniture, clothes, tools, equipment, books, art, and cars (subtracting any car lien) or if there is not \$15,000 of these they can claim some of decedent's money too. Second, a surviving spouse or minor children can use the "Family Allowance" right to get money to live on for 1 year or so during legal proceedings, and often family can choose \$18,000 or a decedent's post-tax income. Third, a spouse or dependent children can use the "Homestead" right to get \$22,500 of decedent's property or accounts. But Montana law does not give family a right to own decedent's home if a Will, deed, or some other thing doesn't give them this (but certain legal steps may let family stay here a year or more). Basically, adding amounts up, often family if they want can demand the first \$55,500 of decedent's things. Obviously if a spouse or children use these rights this leaves less property and money of the decedent to carry out Will gifts or other transfers so may interfere with these. So that family don't bother to use family rights usually people give mostly to any spouse or young children (like over 50% and any family house).

SECURED DEBTS LIKE MORTGAGE OR VEHICLE LIEN ARE NOT PAID OFF

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

MARRIAGE ISSUES

MOST STATES USE “SEPARATE PROPERTY LAW” FOR SPOUSES

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

“COMMUNITY PROPERTY” LAW APPLIES IN OTHER STATES FOR SPOUSES

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

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

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

CHILD ISSUES

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

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

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

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

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

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

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

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

NAMING GUARDIANS RARELY MATTERS DESPITE PARENT'S WORRYING

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

CHAPTER 6

BASIC IDEAS ABOUT HEALTH CARE FORMS

SOME BASIC IDEAS HELP PEOPLE UNDERSTAND HEALTH CARE FORMS

Some ideas help people understand health care forms.

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 7

FORM 1: WILL (STANDARD)

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

Form 1 is a standard Will that is flexible and lets a person control many different things after their death. This form has no part about a Guardian so is for a person with no child under 18. A person doing a Will is called a Testator. The word “Testament” is used in a Will since this use to be a document done with a Will.

FORM IS A WILL WITH SEVERAL PARTS

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

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

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

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

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

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

Last is a paragraph for the person doing the Will as Testator to date and sign and print their name and address, and a paragraph for the 2 witnesses to 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 person named here has died before the Will maker then any other persons named here in this 1st space take their share, and
- 2) a 2nd space to name people to get things if all people named in the 1st space have died, and if any people named in the 2nd space have died their shares go to “lineal descendants” like their children.

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

TESTATOR AND 2 WITNESSES WHILE TOGETHER SIGN WILL

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

LAST WILL AND TESTAMENT

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

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

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TESTATOR

IN WITNESS WHEREOF, I, _____, the Testator sign my name to this instrument this _____ day of _____, 20____, and being first duly sworn to any authority described below if any, do hereby declare that I sign and execute this instrument as my Will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator Signature

WITNESSES

We, _____ and _____, the Witnesses, sign our names to this instrument, and being first duly sworn to any authority described below if any, do hereby declare that the Testator signs and executes this instrument as the Testator's Will and that the Testator signs it willingly, that each of us in the presence and hearing of the Testator hereby signs the Will as a witness to the Testator's signing, and that to the best of our knowledge the Testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness Signature

Name and Residence of Witness (printed)

Witness Signature

Name and Residence of Witness (printed)

CHAPTER 8

FORM 2: WILL (GUARDIAN)

FORM 2 IS BASIC WILL WITH GUARDIAN CLAUSE FOR YOUNG CHILD

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

FORM IS A WILL WITH SEVERAL PARTS

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

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

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

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

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

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

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

Last is a paragraph for the person doing the Will as Testator to date and sign and print their name and address, and a paragraph for the 2 witnesses to 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 person named here has died before the Will maker then any other persons named here in this 1st space take their share, and
- 2) a 2nd space to name people to get things if all people named in the 1st space have died, and if any people named in the 2nd space have died their shares go to "lineal descendants" like their children.

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 who is doing it (the "Testator") in front of 2 persons acting as witnesses at least age 18 who then also sign the Will. Testator and witnesses should be in 1 room and see all others sign. Usually people try to pick witnesses so no Will gift is going to them. Witnesses usually just read the 1 paragraph of the Will they are signing below. Though not required often a Testator says something like: "My name is _____ and this is my Will that I do voluntarily and want you 2 people to witness". Once completed a Will usually should be kept so it can be found quickly within weeks of a Testator's death.

LAST WILL AND TESTAMENT

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

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

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TESTATOR

IN WITNESS WHEREOF, I, _____, the Testator sign my name to this instrument this _____ day of _____, 20____, and being first duly sworn to any authority described below if any, do hereby declare that I sign and execute this instrument as my Will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator Signature

WITNESSES

We, _____ and _____, the Witnesses, sign our names to this instrument, and being first duly sworn to any authority described below if any, do hereby declare that the Testator signs and executes this instrument as the Testator's Will and that the Testator signs it willingly, that each of us in the presence and hearing of the Testator hereby signs the Will as a witness to the Testator's signing, and that to the best of our knowledge the Testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness Signature

Name and Residence of Witness (printed)

Witness Signature

Name and Residence of Witness (printed)

CHAPTER 9

FORM 3: SELF-PROVING AFFIDAVIT

FORM IS SOMETIMES DONE WITH WILL TO REDUCE LATER LEGAL WORK

This form can be done to help with the later legal work involved with people using a Will after a death. This form must be done with a notary. This form is not required to have a valid Will and is often skipped. This book's form is copied from the statutory form found in law at Montana Code § 72-2-524.

FORM HELPS TO LATER SHOW A WILL WAS PROPERLY SIGNED

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

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

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

SELF-PROVING AFFIDAVIT

THE STATE OF MONTANA

COUNTY OF _____

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

Signature of Testator

Signature of Witness

Signature of Witness

Notary:

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

(SEAL)

Notary Signature: _____

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 a “Memorandum”, a “Gift List”, or often just a “List”.

FORM GIVES EASY QUICK WAY TO WRITE MORE GIFTS

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

FORM CAN ONLY GIFT “TANGIBLE PERSONAL PROPERTY”

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

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

72-2-533. Separate writing identifying disposition of tangible personal property.

- (1) [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.
- (2) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty.
- (3) The writing may be:
 - (a) referred to as one to be in existence at the time of the testator's death;
 - (b) prepared before or after the execution of the will;
 - (c) altered by the testator after its preparation; and
 - (d) a writing that has 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

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

TANGIBLE PERSONAL PROPERTY LIST

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

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

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

PROPERTY ITEMS

NAMES OF RECIPIENTS

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

DATE: _____

SIGNED: _____

CHAPTER 11

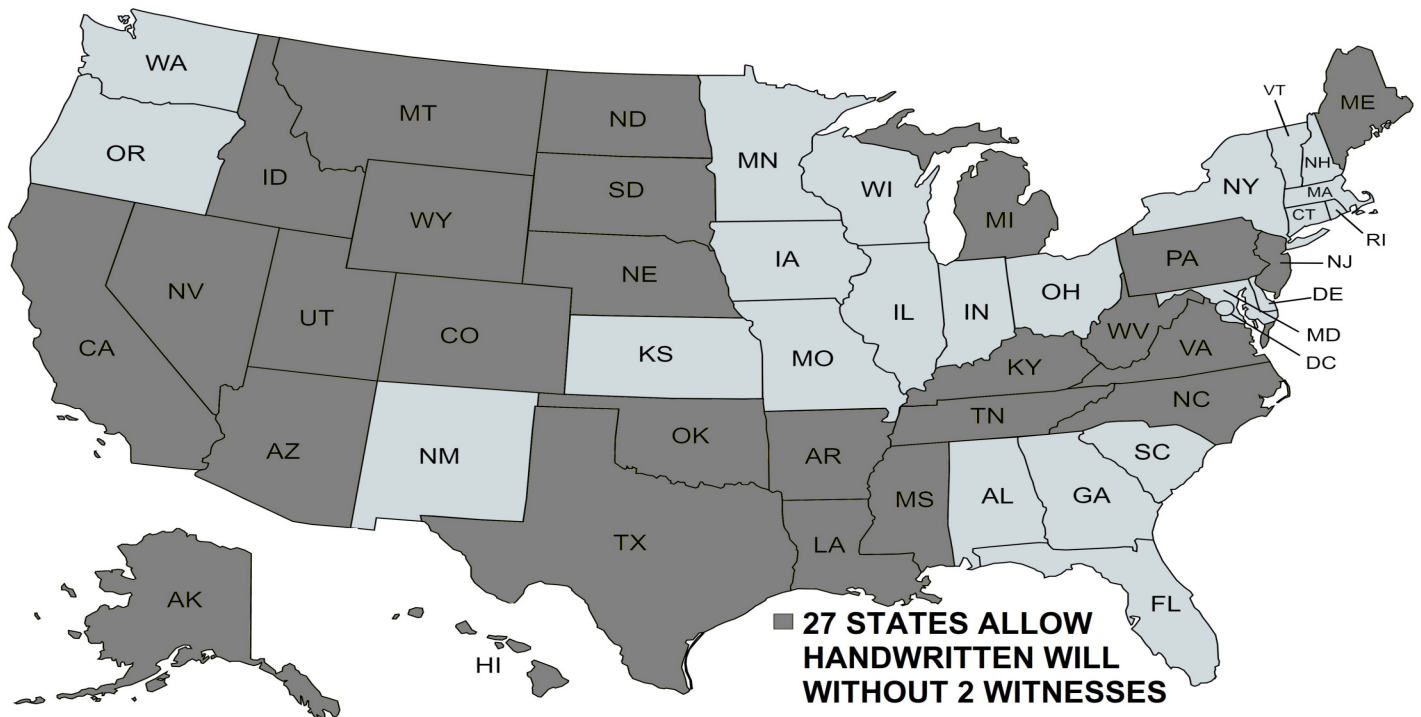
FORM 5: HANDWRITTEN WILL

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

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

HANDWRITTEN WILL WITHOUT WITNESSES IS ALLOWED IN MONTANA

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



HANDWRITTEN WILLS ARE USUALLY FINE BUT REQUIRE LATER WORK

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

WORDS ON BOTTOM OF THIS PAGE CAN BE USED FOR A HANDWRITTEN WILL

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

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

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

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

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

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

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

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

W I L L

1. *I am John David Smith and I now live in Gallatin County, Montana.
I revoke any prior Wills and Codicils and declare this to be my Will.*
2. *I give my estate and all else to Jane Eve Smith and Wendy Sue Hill.
My not giving to some family members like some children is intentional.*
3. *I name Jane Eve Smith as Executor for me, my Will, and my estate.
I request informal probate.*
4. *No bond or similar is needed of any Executor, Guardian, or Conservator.*
5. *For any minor child of mine I name Nellie Amanda Baxter as Guardian
of the Person. I also name this same person as Guardian of the Estate
for their property, money, and estate including if helpful as Conservator.*

May 8, 2023 John David Smith

CHAPTER 12

FORM 6: HEALTH CARE POWER OF ATTORNEY

FORM CAN NAME HEALTH CARE AGENT AND GIVE INSTRUCTIONS

This form lets a person name someone to control health care and give instructions in case this is needed. This book's form is a simplified version of forms that some Montana attorneys use to do things in this area. Note, a well known but more complicated form is available from the Montana State University - Extension office which many people use. This form is in an online pamphlet titled "Health Care Power Of Attorney and Related Documents for Montanans", and people using this normally use the "Part A" form in it and skip other parts.

FORM CAN NAME AGENT FOR HEALTH CARE

In this book's form a person can be named as Agent to control health care if later the person doing the form is later incapacitated (like by inability to communicate, be conscious, or think rationally). This person is also called the Attorney-In-Fact. Often named is a spouse, adult child, relative, or a friend. A second person can be named to serve if the first person doesn't serve but many people skip this because it is rarely needed. A person naming an Agent for health care can help avoid family or friends having to rush to a judge for power over health care if the person is later incapacitated. The Agent for health care usually should not be a worker or owner at a place giving health care.

IN FORM INSTRUCTIONS CAN BE PROVIDED AND GUARDIAN NAMED

In the form written instructions can be given for everyone included Agent, family, and doctors. But many people skip this since they trust their family or Agent and if instructions are unclear then other parties may refuse to follow the form or Agent. Also a box can be checked to say if the Agent should be Guardian for the person if this is ever later needed to help with home, food, and similar care, and many people choose this.

PERSON SIGNS FORM USUALLY IN FRONT OF A NOTARY

Under Montana law the Health Care Power Of Attorney technically can just be signed. But it is strongly recommended and fairly standard to also have a person who is a notary be present and notarize the form, and this helps ensure a hospital or similar party trusts the signature is authentic and the form is valid. Once the form is done it is usually shown to places that may give care to put in a person's file and follow. Montana lets forms about controlling health care be filed in the "End-Of-Life Registry" which doctors and facilities can search if they have time and bother to, but this is often skipped by people who just show the forms directly to their health care providers. To cancel the form a person usually tells their doctor and maybe tells any places that saw the form.

MONTANA

HEALTH CARE POWER OF ATTORNEY

1. Appointment of Agent

I, _____ [*insert printed name*], appoint as my Agent to be my Attorney-in-Fact under this Health Care Power Of Attorney the person named below to act for me in matters related to health care as authorized in this document.

Agent's Name: _____

Address: _____

Phone number: _____

[Optional Alternative Agent]

If I revoke my Agent's authority, if my Agent becomes unwilling or unavailable to act, or if my Agent is my spouse and I become legally separated or divorced, I name the following as alternates to my Agent:

Agent's Name: _____

Address: _____

Phone number: _____

2. Agent's Authority and Obligations

My Agent has the authority to make health care decisions for me and to act as my personal representative as that term is used in the Health Insurance Portability and Accountability Act (HIPAA). This Health Care Power of Attorney is durable and will continue to be effective if I become disabled, incapacitated or incompetent.

My Agent knows my goals and wishes based on our conversations and on any other guidance I may have provided. My Agent has full authority to make decisions for me about my health care according to my goals and wishes. If the choice I would make is unclear, then my agent should decide based on what he or she believes to be in my best interests. My Agent's authority to interpret my goals and wishes and to act for me is intended to be broad and includes, but is not limited to, the following authorities:

- a. To have access to medical records and information to the same extent that I am entitled to, including the right to disclose health information to others;
- b. To agree to, refuse, or withdraw consent to any type of medical care, treatment, surgical procedures, tests, or medications. This includes decisions about using mechanical or other procedures that affect any bodily function, such as artificial respiration, artificially supplied nutrition and hydration (that is, tube feeding), cardiopulmonary resuscitation, or other forms of medical support, even if deciding to stop or withhold treatment could result in my death;

- c. To authorize my admission to or discharge from any hospital, nursing home, residential care, assisted-living or similar facility or service;
- d. To contract for any health care-related service or facility for me, or apply for public or private health care benefits, with the understanding my Agent is not personally financially responsible for those contracts;
- e. To hire and fire medical, social service, and other support personnel who are responsible for my care;
- f. To authorize my participation in medical research related to my medical condition;
- g. To agree to or refuse using any medication or procedure intended to relieve pain or discomfort;
- h. To decide about body, organ and tissue donations and autopsy;
- i. To take any other action necessary to do what I authorize here, including signing waivers or other documents, pursuing any dispute resolution process, or filing claims or taking legal action in my name.

3. When My Agent's Authority Becomes Effective

My Agent's authority to make health care decisions for me is effective immediately after I sign this document, subject to my right to make any decision about my health care if I want and am able to do so.

4. Other Guidance and Preferences.

[Optional. Below you may provide additional guidance to your Agent about your preferences on specific health matters.]

My Agent should make decisions for me consistent with the guidance below:

[You may attach additional pages.]

5. Nomination Of Agent As Guardian If Later Needed.

[Optional.]

I _____ DO _____ DO NOT (initial one option) nominate my Agent as my legal guardian if it becomes necessary for a court to appoint a guardian with the legal authority to make decisions for me in areas in which I lack capacity to make my own decisions.

6. Administrative Provisions

Health care providers can rely on my Agent. No one who relies in good faith on any representations by my Agent (including Alternative Agent) will be liable to me, my estate, my heirs or assigns, for recognizing the Agent's authority.

I intend this power of attorney to be universal and be valid in any jurisdiction of the United States in which it is presented.

I intend that copies of this document are as effective as the original.

My Agent will not be entitled to compensation for services performed under this Health Care Power of Attorney. However my Agent will be entitled to reimbursement for all reasonable expenses that result from acting under this Health Care Power of Attorney.

If a court finds any provision of this Health Care Power of Attorney to be invalid or unenforceable, I intend that this document be interpreted as if that provision was not part of this document.

BY SIGNING BELOW, I INDICATE I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THE GRANT OF A HEALTH CARE POWER OF ATTORNEY TO MY AGENT.

Signed on this _____ day of _____, 20____.

Signature: _____

Current home address: _____

Notary: *Montana law does not require this Health Care Power of Attorney be notarized. But having the form notarized is recommended as evidence your signature is genuine.*

STATE OF MONTANA)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 20____, by _____.

Signature of Notary Public for the State of Montana

Printed Name: _____

Address: _____

My Commission Expires: _____

CHAPTER 13

FORM 7: DECLARATION OF LIVING WILL

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

This form lets a person do serious act of saying stop most health care if later doctors think more health care almost certainly won't help an incapacitated person. This book's form is a statutory form found in law and the Montana Department Of Public Health And Human Services provides a copy of this form online at <https://dphhs.mt.gov/sltc/aging/legalservicesdeveloper/forms>. Note, there is another well known but more complicated form by the Montana State University-Extension office in the online pamphlet titled "Health Care Power Of Attorney and Related Documents for Montanans". This pamphlet has the "Part B" form people can use titled "Use Of Life-Sustaining Treatment" and people doing this should also use the "Part A" form too. But most people skip doing this Chapter's form or any similar form.

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

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

PERSON SIGNS FORM IN FRONT OF 2 WITNESSES

The form must be signed by a person in front of 2 persons acting as witnesses who then sign and write their addresses. Usually the persons acting as witnesses should not be close family of the person, involved in giving them health care or controlling their health care, or likely to benefit from their death. Once the form is done it is usually shown to places that may give care to put in a person's medical file to follow. Montana lets forms about controlling health care be filed in the "End-Of-Life Registry" which doctors and facilities can search if they have time and bother to, but this is often skipped by people who just show the forms directly to their health care providers. To cancel the form a person usually tells their doctor and maybe also tells places that saw the form.

DECLARATION OF LIVING WILL

(Montana Code § 50-9-103)

If I should have an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or attending advanced practice registered nurse, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician or attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

Signed this _____ day of _____, 20____.

Signature: _____

Street Address: _____

City, State, Zip: _____

Phone: _____

Witnesses

The declarant voluntarily signed this document in my presence.

Witness Signature: _____

Address: _____

Witness Signature: _____

Address: _____

CHAPTER 14

FORM 8: PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT

FORM SAYS STARTING IMMEDIATELY DO NOT TRY SOME HEALTH CARE

The Providers Orders For Life-Sustaining Treatment form, often called the “POLST” form, lets a person say starting immediately do not try any of the health care a person can select in the form such as C.P.R. (resuscitation to restart the heart or breathing) or tube feeding. This form is usually used only by the sickest or oldest people. The form is short and can be read fast (like by paramedics) and is often used outside a hospital or other facilities, but it can be used inside these places too. Note, this POLST form has mostly replaced the older “Do-Not-Resuscitate form” which is similar but only 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 at all if they are incapacitated and health personnel are deciding what care to give. A doctor or similar person must co-sign the form and think it is proper. The main thing the form does is say from now on don't try "resuscitation" to restart or help the heart or breathing, and this will include all treatments in this general area like not trying cardio-pulmonary resuscitation (C.P.R.), electric shocks to the heart, and machines to help breathing. There are other treatment options a person can say in the form to not try, like IV fluids by needle, artificial feeding by tube, intubation by breathing tube down the throat, and antibiotics. A person with capacity still thinking OK can override the form by verbally requesting care or just not showing the form to paramedics. Note, if a person falls ill even if they have done this form they are still usually taken to get pain relief and other comfort care. But this form is rarely done since these kinds of health situations often don't occur, it can be stressful to decide this issue, and many people trust their family or Agent for health care to if needed consider all factors and wisely decide when to stop care.

FORM IS SIGNED BY A DOCTOR AND PERSON DOING THE FORM

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

SEND ORIGINAL FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED

HIPAA PERMITS DISCLOSURE OF THIS INFORMATION TO OTHER HEALTHCARE PROFESSIONALS AS NECESSARY

Montana Provider Orders for Life-Sustaining Treatment (POLST)

- **FIRST** follow these orders, **THEN** contact Physician, Advanced Practice Registered Nurse (APRN) or Physician Assistant (PA) for further orders if indicated.
- These Medical Orders are based on the person's medical condition & wishes.
- If Section A or B is not completed, full treatment for that section is implied.
- Completing a POLST is **ALWAYS VOLUNTARY**.

Legal Last Name

Legal First Name/Middle Name

Date of Birth

*In preparing these orders, inquire if the patient has a living will or other advance directive.
If yes and available, review for consistency with these orders and update as needed.*

A

Check one box only

CARDIOPULMONARY RESUSCITATION (CPR) *Person has NO pulse and is not breathing. *****
☐ **YES CPR:** Attempt Resuscitation ☐ **NO CPR:** Do Not Attempt Resuscitation(DNAR)/

NOTE: Selecting 'Yes CPR' requires choosing "Full Treatment" in Section B. When not in cardiopulmonary arrest, follow orders in Section B.

Allow Natural Death (AND)

B

Check one box only

MEDICAL INTERVENTIONS*****Person HAS a pulse and is breathing. *****
☐ **Full Treatment**—primary goal to prolong life by all medically effective means:

In addition to treatments described below in "Selective Treatment" and "Comfort-focused Treatment, use intubation, advanced airway interventions, mechanical ventilation, and cardioversion, as indicated. Transfer to hospital, if indicated. Includes intensive care.

☐ **Selective Treatment**—goal to treat medical conditions while avoiding burdensome measures:

In addition to treatment described below in "Comfort-focused Treatment," use IV antibiotics and IV fluids, as indicated. **Do not intubate.** May use noninvasive positive airway pressure. Transfer to hospital if indicated. **Avoid intensive care.**

☐ **Comfort-focused Treatment**—primary goal to maximize comfort:

Relieve pain and suffering with medication by any route, as needed; use oxygen, suctioning, and manual treatment of airway obstruction, if indicated. Do not use treatments listed in "Full Treatment" and "Selective Treatment" above, unless consistent with comfort goal. **Do not transfer to hospital for life-sustaining treatment.** **Transfer only if comfort needs cannot be met in current location.**

C

Check one box only

ARTIFICIALLY ADMINISTERED NUTRITION * If feasible, always offer food & water by mouth. *****
☐ Artificial nutrition by tube—long term/permanent, if indicated.

☐ Artificial nutrition by tube—short term/temporary only.

☐ No artificial nutrition by tube.

☐ No decision has been made
D**DISCUSSED WITH (check all that apply):**
☐ Patient

☐ Legal guardian

☐ Medical Power of Attorney

☐ Other (Name & Relationship): _____
SIGNATURES OF PROVIDER AND PATIENT, Surrogate, Medical Power of Attorney, and Legal GUARDIAN (MANDATORY)

If signed by surrogate legal decision maker, preferences expressed must reflect patient's wishes as best understood by surrogate.

Significant thought has been given to these instructions. Preferences have been discussed and expressed to a healthcare professional. This document reflects those treatment preferences, which may also be documented in a Medical Power of Attorney, CPR order, Living Will, or other Advance Directive (attach if available).

Patient/Legal Decision Maker Signature (Mandatory)

Name (Print)

Relationship/ Decision maker status (Write "self" if patient)

Date Signed (Mandatory)

SIGNATURE OF PROVIDER: My signature below indicates to the best of my knowledge that these orders are consistent with the patient preferences.

Name of Person Preparing Form

Phone number of Preparer

Date Performed

Physician / APRN / PA Signature (Mandatory)

Print Physician / APRN / PA Name

Date Signed (Mandatory)

Directions for Health Care Professionals

Completing POLST

- Completed by a health care professional based on patient preferences and medical indications.
- Provider signature must be a Montana licensed physician, advanced practice registered nurse or physician assistant.
- Patient (or legal decision-maker, if patient unable to make medical decisions), **must sign** to be valid.
- Verbal orders are acceptable with follow-up signature by provider in accordance with organization/community policy.
- Documentation of conversations regarding POLST completion should be in the medical record.
- Use of the original form is strongly encouraged. Photocopies and FAXs of signed POLST forms are legal and valid. The patient should retain the original on “Terra” Green colored paper.

Using POLST

- Any incomplete section of POLST implies full treatment for that section.

Section A:

- **No** defibrillator (including automated external defibrillators) should be used on a patient who has chosen “Do Not Attempt Resuscitation.”

Section B:

- Non-invasive positive airway pressure includes continuous positive airway pressure (CPAP), bi-level positive airway pressure (BiPAP), and bag valve mask (BVM) assisted respirations.
- When comfort cannot be achieved in the current setting, the patient, including someone with “Comfort-focused Treatment,” should be transferred to a setting able to provide comfort (i.e. treatment of a hip fracture).
- IV medication to enhance comfort may be appropriate for a patient who has chosen “Comfort-focused Treatment.”

Section C:

- Certain medical conditions may prevent intake of food and water, as it can worsen symptoms.
- If this applies, further discussion with and documentation by a healthcare provider is required.

Reviewing POLST

- Previously completed advance directives should not conflict with these Montana Provider Orders for Life-Sustaining Treatment (POLST) unless significant discussion and documentation between the patient, legal decision maker and healthcare provider occurs and is documented.
- POLST review is recommended when:
 - The patient is transferred from one care setting or care level to another.
 - There is substantial change in the patient’s health care status including previous wishes that conflict with medical recommendations.
 - The patient has a change in treatment preference.

Modifying and Voiding POLST

- At any time a patient or legal decision-maker can void the POLST form or change his/her mind about his/her treatment preferences by executing a verbal or written advance directive or completing a new POLST.
- To void POLST, draw a line through Sections A through D and write “VOID” in large letters. Sign and date.
- The most recently dated POLST is considered the valid POLST and supersede all prior POLST directives.

CHAPTER 15

FORM 9: STATUTORY FORM POWER OF ATTORNEY

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

This form lets a person share power with someone to do things with the person's property, money, and other things. Many people call this form a "Financial Power Of Attorney". This book's form is based on the statutory form found in law at Montana Code § 72-31-353. The form includes pages with helpful information at the start and end that are part of the statutory form and should be included with the form.

FORM GIVES POWER TO LET SOMEONE DO THINGS

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

IN FORM POWERS GIVEN ARE INITIALED AND INSTRUCTIONS CAN BE GIVEN

In the form a parent must initial to say which powers are given, or they can just initial the last item to give all the listed powers. Many people give broad power since if an Agent's power is not clear then a bank, school, or other parties may hesitate or refuse to obey their orders. Also in the form instructions can be given, but many people skip this since they trust the person they named and if instructions aren't clear then other parties may hesitate or refuse to obey the Agent. Also in the form a person can be named to be Guardian or Conservator for a person in case this is needed later and a judge is deciding who to pick.

DUE TO RISKS MANY SKIP THIS FORM OR CONSULT A LAWYER

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

PERSON SIGNS FORM IN FRONT OF A NOTARY

A person must sign the form in front of a notary who then notarizes it. Once it is done some cautious people quickly show the form to banks and similar to say they should follow it later. When an Agent signs anything it should be like, for example: "Ed Smith signing as Agent under a Power of Attorney for Ann Hill". To cancel the form people should tell the Agent and take back copies and maybe tell places shown the form. Some banks before acting may later ask the Agent to sign the form found at Montana Code § 72-31-354.

MONTANA

STATUTORY FORM POWER OF ATTORNEY

(Montana Code § 72-31-353)

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, Title 72, chapter 31, part 3.

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

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

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent, you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

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

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

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

DESIGNATION OF AGENT

I, _____,
(Name of Principal)

name the following person as my agent:

Name of Agent: _____

Agent's Address: _____

Agent's Telephone Number: _____.

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

Name of Successor Agent: _____

Successor Agent's Address: _____

Successor Agent's Telephone Number: _____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 3:

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

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

LIMITATION ON AGENT'S AUTHORITY

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

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

EFFECTIVE DATE

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

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

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

Nominee's Name for conservator or guardian of my estate: _____

Nominee's Address: _____

Nominee's Telephone Number: _____

Nominee's Name for guardian of my person: _____

Nominee's Address: _____

Nominee's Telephone Number: _____

RELIANCE ON THIS POWER OF ATTORNEY

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

SIGNATURE AND ACKNOWLEDGMENT

Your Signature

Date

Your Name Printed

Your Telephone Number

Your Address

Notary:

STATE OF MONTANA)
) SS.
COUNTY OF _____)

This document was acknowledged before me on _____,
(Date)

by _____.
(Name of Principal)

(Seal, if any)

Signature of Notary

My commission expires: _____

This document prepared by: _____

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

Unless the Special Instructions in this power of attorney state otherwise, you must also:

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

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

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

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

(5) cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and

(6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney.

Events that terminate a power of attorney or your authority to act under a power of attorney include:

(1) death of the principal;

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

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

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

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

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 3. If you violate the Uniform Power of Attorney Act, Title 72, chapter 31, part 3, or act outside the authority granted, you may be liable for any damages caused by your violation.

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

CHAPTER 16

FORM 10: POWER OF ATTORNEY FOR CARE, CUSTODY, AND PROPERTY OF MINOR CHILD

FORM LETS PARENT SHARE POWER WITH SOMEONE OVER CHILD UNDER 18

This form lets a parent (or guardian) of a child under age 18 share power over them with someone else. This book's form is based on the form the Montana Supreme Court provides on a website for people to use. See <https://courts.mt.gov/forms/endoflife> (*Power of Attorney for Care, Custody, and Control of Minor Child*).

FORM CAN GIVE POWER TO SOMEONE OVER CHILD UNDER 18

In the form a parent or guardian can share some power over a child under 18 with a person they name. The person getting power can be called the "Attorney-In-Fact" but the term "Agent" is mostly used now. The person who did the form can usually fire the person they named or overrule any decision they dislike. Often given power is a relative, friend, or teacher helping watch a child. This form is often used if a parent and child are separated for work, school, training, rehab, sports, prison, military, immigration, or long visits. The form is mostly not done for brief or normal situations like daycare, babysitter, short visits, or most times a parent can come quickly. This form can avoid need for more serious legal actions like state foster care. This form can let someone watch a child and give them power just in case a medical, school, or similar problem arises. Power over adoption is not given by this form. This form effective for up to 6 months unless a parent is in the military in some way and then the form can last until they return from service.

IN FORM POWERS GIVEN ARE INITIALED AND INSTRUCTIONS CAN BE GIVEN

In the form a parent must initial to say which powers are given, or they can just initial item N to give all the possible listed powers. Many people give as much power as possible since if an Agent's power is not clear then a bank, school, or other parties may hesitate or refuse to obey the orders of the Agent. Also in the form instructions can be given to the Agent, but many people skip this since they trust the person they named and also if instructions aren't clear then other parties may hesitate or refuse to obey the Agent.

FORM IS SIGNED BY A PARENT IN FRONT OF A NOTARY

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

POWER OF ATTORNEY FOR CARE, CUSTODY, AND PROPERTY OF MINOR CHILD

Montana Code Annotated § 72-5-103 provides as follows:

Delegation of powers by parent or guardian.

- (1) A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.
- (2) The 6-month limitation provided in subsection (1) does not apply to:
 - (a) a member of the Montana national guard who serves for more than 180 continuous days on duty pursuant to Title 10 or 32 of the United States Code or on state active duty pursuant to Article VI, section 13, of the Montana constitution;
 - (b) a member of the active duty military forces of the United States; or
 - (c) a member of the federal reserves who serves for more than 180 continuous days on duty pursuant to Title 10 of the United States Code.
- (3) As used in this section, "federal reserves" means the United States air force reserve, army reserve, navy reserve, marine corps reserve, or coast guard reserve.

Pursuant to the above statute, I, _____,
(your name)of _____
(your complete address)appoint, _____, who
(the name of the person whom you want to care for your child)resides at _____
(complete address of the person whom you want to care for your child)and whose phone number is _____ as my
(phone number of person whom you want to care for your child)agent (attorney-in-fact) to act in any lawful way for me regarding the care, custody, or property of my minor child, _____,
(name of minor child)age _____, with respect to the following initialed subjects:
(age of minor child)

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL:

- | | | |
|-------|-----|---|
| _____ | (A) | real property and housing transactions; |
| _____ | (B) | tangible personal property transactions; |
| _____ | (C) | stock and bond transactions; |
| _____ | (D) | commodity and option transactions; |
| _____ | (E) | banking and other financial institution transactions; |
| _____ | (F) | health care consent for the child and other health care transactions; |
| _____ | (G) | insurance and annuity transactions; |
| _____ | (H) | estate, trust and other beneficiary transactions; |
| _____ | (I) | claims and litigation; |
| _____ | (J) | personal and family maintenance, including decisions of where the child may reside; |
| _____ | (K) | benefits from social security, medicare, medicaid, or other governmental programs or from military service; |
| _____ | (L) | all transactions concerning the child=s school or education; |
| _____ | (M) | tax matters; |
| _____ | (N) | ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N). |

My agent does not have the power to consent to the marriage or adoption of my child.

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED OR IT WILL EXPIRE AUTOMATICALLY AFTER SIX MONTHS IN MOST CASES.

I agree that any third party who receives a copy of this document may act under it. I may revoke this power of attorney by a written document expressly indicating my intent to revoke.

Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation.

I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this _____ day of _____, 20____.

Your Signature

Printed name:_____

Notary:

STATE OF MONTANA

)

):ss

COUNTY OF _____)

This document was acknowledged before me on _____, 20____.
by _____, the principal named above.

(NOTARIAL SEAL)

Notary Public for the State of Montana

Residing at _____

My commission expires:_____

BY SIGNING, ACCEPTING, OR ACTING UNDER THIS APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT. THE AGENT WORKS EXCLUSIVELY FOR THE BENEFIT OF THE PRINCIPAL. THE FOREMOST DUTY AS THE AGENT IS THAT OF LOYALTY TO AND PROTECTION OF THE BEST INTERESTS OF THE PRINCIPAL. THE AGENT SHALL DIRECT ANY BENEFITS DERIVED FROM THE POWER OF ATTORNEY TO THE PRINCIPAL. THE AGENT HAS A DUTY TO AVOID CONFLICTS OF INTEREST AND TO USE ORDINARY SKILL AND PRUDENCE IN THE EXERCISE OF THESE DUTIES.

Signed this _____ day of _____, 20____.

Signature of Agent

CHAPTER 17

FORM 11: AUTHORIZING AGENT AFFIDAVIT FOR REMAINS

LETS PERSON BE NAMED AND INSTRUCTIONS GIVEN TO HANDLE DEAD BODY

This form lets someone be named and instructions be given by a person to control their body after death (their “remains”) and related things like funeral, burial, cremation, ceremonies, and buying things for all this. This book’s form is a statutory form found at Montana Code § 37-19-904.

FORM CAN NAME PERSON TO CONTROL DEAD BODY AND RELATED ISSUES

This form lets a person authorize someone as their Agent to control the person’s dead body and all related issues like funeral, burial, cremation, ceremonies, and buying goods and services for all this. If this form is not done under state law control of all this is by the closest family member (in order this means a spouse, adult children, parents, then siblings). People do this form rarely, mostly only if it seems family would do a bad job like they may be too upset while mourning, be bad with money, or do unwanted things. Payment for all these things comes from pre-paid funeral accounts, insurance, and a dead person’s money and property, and family and a person’s Executor and family are legally required to arrange payment to do as the dead person wanted if the dead person left enough money and property to afford it. No matter who is in charge they legally should do what the dead person wanted done with their remains so long as the dead person’s estate can afford it.

FORM CAN GIVE INSTRUCTIONS THAT EVERYONE MUST FOLLOW

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

PERSON SIGNS FORM IN FRONT OF A NOTARY

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

AUTHORIZING AGENT AFFIDAVIT FOR REMAINS

(Montana Code § 37-19-904)

State of Montana)
County of _____) ss.

I, _____
(person designating another person to control the disposition of the person's remains)

do hereby designate _____
(person who is provided with the right to control the disposition)

with the right to control the disposition of my remains upon my death.

I ____ **have** or ____ **have not** (select one) attached or written below
specific directions concerning the disposition of my remains with which the
designee shall substantially comply, provided the directions are lawful and
there are sufficient resources in my estate to carry out the directions.

Directions: _____

(attach additional pages if needed)

Date: _____ **Signature:** _____

NOTARY: Subscribed and sworn to before me this _____ day of the month
of _____ of the year 20____.

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

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

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

I give _____ to _____.

SKIPPED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Custodian are interchangeable, and residue and residuary are interchangeable.

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

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

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

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

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

TESTATOR

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

Paul Samuel Maxwell

Testator

WITNESSES

We, Eve Mable Rogers and Mary Ann Moon, the Witnesses, sign our names to this instrument, and being first duly sworn to any authority described below if any, do hereby declare that the Testator signs and executes this instrument as the Testator's Will and that the Testator signs it willingly, that each of us in the presence and hearing of the Testator hereby signs the Will as a witness to the Testator's signing, and that to the best of our knowledge the Testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Eve Mable Rogers

Witness Signature

Eve Mable Rogers, 14 2nd St., Billings, MT 59201

Name and Residence of Witness (printed)

Mary Ann Moon

Witness Signature

Mary Ann Moon, 35 Buffalo Road, Broken Arrow, Colorado 84001

Name and Residence of Witness (printed)

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

LAST WILL AND TESTAMENT

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

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

I give big oak table to Anne J. Smith .

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

I give 63 Wentworth Road, Missoula, Montana to Kenneth Alan Ford .

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

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

I give Irish ring and my wedding ring to Susan Poppingham .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TESTATOR

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

Paul Brian Kent

Testator

WITNESSES

We, Olivia Joy Pawlenty and Roy Felix Pawlenty, the Witnesses, sign our names to this instrument, and being first duly sworn to any authority described below if any, do hereby declare that the Testator signs and executes this instrument as the Testator's Will and that the Testator signs it willingly, that each of us in the presence and hearing of the Testator hereby signs the Will as a witness to the Testator's signing, and that to the best of our knowledge the Testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Olivia Joy Pawlenty

Witness Signature

Olivia Joy Pawlenty, 87 Forest Road, Great Falls, MT 59501

Name and Residence of Witness (printed)

Roy Felix Pawlenty

Witness Signature

Roy Felix Pawlenty, 87 Forest Road, Great Falls, MT 59501

Name and Residence of Witness (printed)

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

LAST WILL AND TESTAMENT

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

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

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

I give \$4000 to Worthington Food Shelf in Great Falls, Montana.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TESTATOR

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

David Eric Smith

Testator

WITNESSES

We, John Elliot Potter and Ann Paula Blom, the Witnesses, sign our names to this instrument, and being first duly sworn to any authority described below if any, do hereby declare that the Testator signs and executes this instrument as the Testator's Will and that the Testator signs it willingly, that each of us in the presence and hearing of the Testator hereby signs the Will as a witness to the Testator's signing, and that to the best of our knowledge the Testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

John Elliot Potter

Witness Signature

John Elliot Potter, 2 Spruce St, Sherwood, MT 59050

Name and Residence of Witness (printed)

Ann Paula Blom

Witness Signature

Ann Paula Blom, 70 Rocky Road, Clarksville, MT 59011

Name and Residence of Witness (printed)

Sample Filled Out Form: Self-Proving Affidavit

SELF-PROVING AFFIDAVIT

THE STATE OF MONTANA

COUNTY OF Yellowstone

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

David Eric Smith

Testator

John Elliot Potter

Witness

Ann Paula Blom

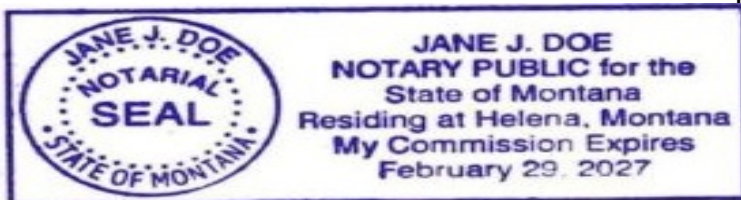
Witness

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

(SEAL)

Signed: Jane J. Doe

Official capacity of officer: _____



Sample Filled Out Form: Tangible Personal Property List

TANGIBLE PERSONAL PROPERTY LIST

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

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

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

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

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