

SIMPLE WILL – Annotated

I, _____, residing at _____, _____, _____, declare this to be my Will, and I revoke any and all wills and codicils I previously made.

ARTICLE I: Funeral expenses & payment of debt

I direct my executors to pay my enforceable unsecured debts and funeral expenses, the expenses of my last illness, and the expenses of administering my estate.

By law, debts must be paid before other assets are distributed. This clause gives your executor authority to pay the funeral home, court costs, and hospital expenses. Using the term "enforceable" prevents creditors from reviving debts you are no longer obliged to pay, usually those discharged in bankruptcy. And the term "unsecured" prevents a court from interpreting this clause to mean that your estate must pay off your mortgage or other secured debts that you probably don't want immediately paid off. Note: in some states, the executor is required by law to pay enforceable unsecured debts. In these states, this clause is unnecessary and may create problems.

ARTICLE II: Money & Personal Property

I give all my tangible personal property and all policies and proceeds of insurance covering such property, to my husband, _____. If he does not survive me, I give that property to those of my children who survive me, in equal shares, to be divided among them by my executors in their absolute discretion after consultation with _____. My executors may pay out of my estate the expenses of delivering tangible personal property to beneficiaries.

This gives your personal property to your spouse. If there are particular items that you want to go to other people (such as heirlooms, jewelry, professional equipment, and so on) you should enumerate them and the person you want them to go to in a separate clause (e.g., "I give my Beatles albums to my friend William Shears"), and note that Article II excludes those items. Some people will use separate clauses for legacies (disposition of money) and bequests (disposition of tangible personal property). Note the important clause that accounts for the possibility that your spouse will die first. The clause on insurance means that if some property you owned was destroyed (perhaps in the event that caused your death, like a car wreck), your heirs will receive the insurance proceeds, not the mangled car.

ARTICLE III: Real Estate

I give all my residences, subject to any mortgages or encumbrances thereon, and all policies and proceeds of insurance covering such property, to my husband, Tex. If he does not survive me, I give that property to _____.

Most people want their spouse to keep the family home. In some states, particularly community property states, it's sometimes preferable to leave your residence to your spouse in a marital trust.

ARTICLE IV: Residuary Clause

I give the rest of my estate (called my residuary estate) to my husband, Tex. If he does not survive me, I give my residuary estate to those of my children who survive me, in equal shares, to be divided among them and the descendants of a deceased child of mine, to take their ancestor's share per stirpes.

Usually, the residuary clause begins "I give all the rest, residue, and remainder of my estate..." because lawyers are afraid to change tried-and-true formulas, and for decades, legal documents never used one word when a half-dozen would do. However, this plain-English form will also work. This clause covers any property you own or are entitled to that somehow wasn't covered by the preceding clauses.

ARTICLE V: Taxes

I direct my executors, without apportionment against any beneficiary or other person, to pay all estate, inheritance and succession taxes (including any interest and penalties thereon) payable by reason of my death.

One common mistake by people who use a living trust as well as a will is to make the beneficiary of the estate different from the people benefiting from the trust. The same problem exists when there are significant specific gifts and the residuary beneficiaries are different from the recipients of the specific gifts. In such cases those paying the taxes are not those who receive the most property, an arrangement that can unfairly saddle some beneficiaries with the whole tax bill, and at worst can even bankrupt the estate. The goal should be to see that the taxes are paid by those who benefit from gifts. Often, a provision apportioning taxes to taxable transfers is used to make sure that each recipient of a taxable gift pays his or her fair share. Additional language is sometimes used to apportion credits.

ARTICLE VI: Minors

If under this will any property shall be payable outright to a person who is a minor, my executors may, without court approval, pay all or part of such property to a parent or guardian of that minor, to a custodian under the Uniform Transfers to Minors act, or may defer payment of such property until the minor reaches the age of majority, as defined by his or her state of residence. No bond shall be required for such payments.

This clause gives your executors discretion to make sure any gift to a minor will be given in a way that's appropriate to his or her age. The "no-bond" language is intended to save the estate money.

ARTICLE VII: Fiduciaries

I appoint my spouse, _____, as Executor of this will. If he is unable or unwilling to act, or resigns, I appoint _____ and _____ as successor co-executors. If either co-executor also predeceases me or is unable or unwilling to act, the survivor shall serve as executor. My executor shall have all the powers allowable to

executors under the laws of this state. I direct that no bond or security of any kind shall be required of any executor.

If you set up a trust in the will, you could name the trustees in this clause as well. The "bond or security" clause is designed to save the estate money.

ARTICLE VIII: Simultaneous Death Clause

If my spouse and I shall die under such circumstances that the order of our deaths cannot be readily ascertained, my spouse shall be deemed to have predeceased me. No person, other than my spouse, shall be deemed to have survived me if such person dies within 30 days after my death. This article modifies all provisions of this will accordingly.

This clause helps avoid the sometimes time-consuming problems that occur if you and your spouse die together in an accident. Your spouse's will should contain an identical clause; even though it seems contradictory to have two wills each directing that the other spouse died first, since each will is probated by itself, this allows the estate plan set up in each will to go forward as you planned. The second sentence exists to prevent the awkward legal complications that can ensue if someone dies between the time you die and the time the estate is divided up. Instead of passing through two probate processes, your gift to a beneficiary who dies shortly after you do would go to whomever you would have wanted it to go had the intended beneficiary died before you did. Most such gifts go into the residuary estate.

ARTICLE IX: Guardian

If my husband does not survive me and I leave minor children surviving me, I appoint as guardian of the person and property of my minor children [REDACTED]. They shall have custody of my minor children, and shall serve without bond. If they do not qualify or for any reason ceases to serve as guardian, I appoint as successor guardian [REDACTED].

I have signed this will this ____ day of ____, 20____. _____ (legal signature)

SIGNED AND DECLARED by _____ on _____ to be their will, in our presence, who at their request, in their presence and in the presence of each other, all being present at the same time, have signed our names as witnesses.

_____ (signature)

_____ Address

_____ (signature)

I. Witness

Address

Self-Proving Affidavit

STATE OF _____

COUNTY OF _____

Each of the undersigned, _____ and I. Witness, both on oath, says that:

The attached will was signed by _____, the testator named in the will, on the ___ day of ___, 20___, at the law offices of _____.

When they signed the will, _____ declared the instrument to be their last will.

Each of us then signed his or her name as a witness at the end of this will at the request of _____ and in her presence and sight and in the presence and sight of each other.

_____ was, at the time of executing this will, over the age of eighteen years and, in our opinions, of sound mind, memory and understanding and not under any restraint or in any respect incompetent to make a will.

In our opinions, _____ could read write and speak in English and was suffering from no physical or mental impairment that would affect her capacity to make a valid will. The will was executed as a single original instrument, and was not executed in counterparts.

Each of us was acquainted with _____ when the will was executed and makes this affidavit at her request.

_____ (signature)

Address

_____ (signature)

I. Witness

Address

Sworn to before me this _____ day of _____, 20_____.

_____ (signature and official seal)

Notary Public

SAMPLE