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**STEP-BY-STEP GUIDE FOR COMPLETING YOUR WILL**

**MARRIED, WITH CHILDREN**

This will form is for a married person with at least one biological or adopted child. It is written with the assumption that you will leave the bulk of your estate to your spouse, and that you will name your spouse as the executor of your estate. The form also allows you to name alternate beneficiaries and an alternate executor should your spouse predecease you or not survive you by more than sixty days. These alternate beneficiaries may be your child(ren). Each spouse should complete and sign a separate will form. A sample of this will is included for your convenience.

*BEFORE YOU BEGIN*

1. Read through the entire document to determine what information you will need to complete your will. Gather any missing information and think about the decisions you need to make.
2. Remember, when entering the information it is important to use full names and addresses. Always double check the spelling and accuracy of the information you enter. Otherwise, your executor may not be able to identify your intended beneficiaries.
3. It is better to type the information necessary to complete your will, because this leaves less room for error, and for misinterpretation of your wishes. Do not cross out mistakes, but rather go back and retype or rewrite the entire will. At the end, there should be only one original. Drafts and mistakes should be destroyed.

*COMPLETING YOUR WILL*

1. First, fill in your name under the heading. And then fill in your name and the state and county where you currently reside in the opening paragraph.
2. In Section I, enter the name, birth date, and social security number for your spouse, as well as the date of your marriage. You will also list the names, dates of birth, social security numbers, and current city and state of residence of all of your children, both minor and adult.
3. In Section II, you will appoint the executor of your will, and select a person to serve as alternate executor. As previously stated, this form assumes that your spouse will be named as the executor of your will. The executor can be a beneficiary. The executor is the person who will manage the distribution of your estate. Generally, this person can act as you would to manage your estate, including but not limited to, buying and selling property, settling debts, and contacting your beneficiaries to arrange for the distribution of your property in accordance with the wishes you have expressed in your will.
4. In Section III, you will appoint a guardian, who will act as a substitute parent, for any of your children who are minors when you and your spouse die. If all children are adults, you may write “N/A” or “None” in the blanks. If you fail to appoint a guardian for your minor children, a court will determine who will become their guardian. It is a good idea to check with those you intend to appoint to ensure that they are willing to become the guardian of your minor children.
5. In Section IV, you will appoint a trustee and alternate trustee for a trust(s) that will be established upon your and your spouse’s death, if your children are minors at the time of your deaths. You may want to consider whether or not you would like the guardian you appoint to also serve as trustee. You must also determine at what age any assets remaining in such a trust(s) will be distributed outright to the beneficiary(ies), at which point they will be free to spend the money as they see fit. 25 and 30 years of age are commonly used, but any age 18 or greater is acceptable. This trust(s) will not avoid the need to probate your will, if it would otherwise subject to probate in your state.
6. In Section V, you will identify any of the children you listed in Section I that you wish to entirely disinherit. If none, then write “N/A”; do not cross anything out. Do not leave $1 to a child instead of disinheriting him or her, and do not list a reason(s) for the disinheritance.
7. In Section VI, you will name the beneficiary or beneficiaries for your personal and real property. As previously stated, this form is set up so that all property is left to your spouse, allowing you to name an alternate beneficiary(ies) if your spouse should predecease you or fail to survive you by at least sixty days. You may leave bequests to children or other relatives just as you would any other beneficiary. You may choose to leave all your property, or all of your property except for specified items, to your children, or to others, in equal shares by indicating this (e.g., “My ½-carat diamond engagement ring, Mary Jones; All other personal property, 50% to John Knight, 50% to Tom Day,” or “All, Equally among my children.”). If you wish to leave a specific item or amount of money to a person or charity, list it here. Keep in mind that in general specific requests are fulfilled first as far as assets permit (after funeral and probate expenses), and large specific bequests here could result in no distribution to residuary beneficiaries, if the estate ends up being smaller than originally expected.
8. In Section VII, you will select the person or persons who will take the residue of your estate. The residue of your estate is made up of anything that is not specifically devised in your will, or any specific devise that fails. For instance, if the beneficiary and alternate beneficiary of your personal property predeceases you or are otherwise unable to take the bequest, then the person named to receive the residue of your estate would receive your personal property. If the estate ends up being larger than expected (e.g., as the result of a life insurance policy payable to you, or a wrongful death award following your death), then the residuary amount may end up being the most significant assets distributed under the will. You may leave bequests to children or other relatives just as you would any other beneficiary. You may choose to leave all your property, or all of your property except for specified items, to your children in equal shares by indicating this on the first line.

*FINALIZING YOUR WILL*

1. Determine who you will ask to witness your will and ask them to accompany you to sign the will in front of a notary public. You should use three adults to witness the signing of your will. You should select witnesses that are different from the beneficiaries named in your will. The notary public does not count as a witness. In many areas, mobile notaries will come to you.
2. Ask the notary public if there is an additional self-proving affidavit form you should use in your state.
3. As a matter of formality, you should acknowledge to everyone present that the document everyone will be signing is your will. Then you and your witnesses should sign the will and the self-proving affidavit in the presence of each other and in the presence of the notary public. As the testator, be sure to sign the bottom of each page, as well as where indicated.
4. After it is signed and notarized, put your will in a safe place and consider letting your named executor and alternate executor know where it is. Destroy all unsigned and draft copies, as well as any prior wills or codicils. A few states have a will registry; if yours is one, you may wish to register your will with the state. You are finished!
5. If you later wish to change your will, you may do so by destroying your original will and executing a new will, with witnesses and a notary, as above. This will is your “last” meaning only that it is your most recent, not the last will you will ever make. You should execute a new will any time you marry, divorce, your spouse dies, or you give birth to, or adopt, a child. If more than a year has passed, you may want to purchase a new form in case it has been revised.

**NOTES**

***Appropriateness of Form; Unusual Situations***

This will form is appropriate if you are eighteen years of age or older, of sound mind, and your estate is small enough not to be subject to state or federal death taxes. If you have significant assets; have a business you wish to pass on to the next generation; wish to disinherit your spouse; are under eighteen years of age; cannot read, sign your name, or see; have a mental disability, have been determined to be incapacitated, or have a conservator or guardian; or have a domestic partner or gay marriage, then this will form may not be appropriate for you, and you should consult an estate planning attorney in your state for specific legal advice pertaining to your circumstances.

***Statutory Protection of the Spouse***

The majority of states have enacted laws that protect a spouse from total disinheritance. These laws vary from state to state. For instance, in community property states, the spouse is automatically entitled to half of the assets acquired during the marriage. In other states, spouses who are disinherited can receive one fourth to one half of the testator’s estate if they contest the will in court. You should consult the laws of your state to determine how a spouse might be protected from disinheritance. As stated above, if you wish to disinherit your spouse, you should seek legal advice.

***The Effect of Divorce***

In the majority of states, divorce revokes any bequest made to a spouse or the family member of a spouse in a will executed before the parties were granted a divorce. This means property left to a spouse or the family member of a spouse would pass to the alternate beneficiary or into the residue of the estate if the testator did not change his or her will prior to their death. Whether you wish to change the beneficiaries or not, it is good practice to execute a new will following a divorce.

***Other Estate Planning Documents***

In addition to executing a will, it is also good estate planning practice to execute a durable power of attorney to enable your spouse (or another person) to act on your behalf in all or in some situations when you are unavailable or unable to act (for example, if you are out of town and your spouse needs to sign a contract on your behalf, or if you become incapacitated and your spouse needs the power to perform financial and other transactions on your behalf). A general power of attorney enables your agent to act in your place with regard to virtually all matters, while a limited power of attorney is effective only for the acts or powers specified in it. Additionally, a durable power of attorney for health care and living will (called an advance health care directive in some states) will enable your spouse to make health care and end of life decisions in accordance with your wishes.