

Basics of Estate Planning

- I. What does a Will do?
 - a. Mechanism by which property in estate distributed.
 - b. Executor is appointed to administer estate.
 - c. Creditors of estate are paid.
 - d. Property, tangible and intangible, distributed.
 - e. In some cases, trusts are setup to benefit wife or kids.
- II. Typical Will Provisions. **See Example.**
 - a. Give away property to heirs.
 - b. Trust set up for under 21 beneficiaries.
 - c. Authorization to pay all debts.
 - d. Executor and, if necessary, trustee appointed.
 - e. Administrative powers of fiduciaries.
 - f. Presumption of survivorship.
- III. When should a will be updated?
 - a. Move to another state.
 - b. Will is very old (10 years or more).
 - c. Go from taxable to a non-taxable estate situation (or vice versa).
 - d. Change in plans with regards to distribution of estate.
 - e. Spouse dies.
- IV. Do I need a trust?
 - a. Usually set up for estate tax planning to minimize tax.
 - b. Also for second marriages and special needs individuals.
 - c. Often sold as "probate avoidance" but beware.
 - d. Often used where there is a second marriage.
 - e. Can appoint yourself to be Trustee during your lifetime.
- V. What does a Power of Attorney do?
 - a. Primarily addresses financial decision making.
 - b. Springing versus non-springing.
 - c. Includes provisions authorizing payment of medical expenses.
 - d. More important as get older.
 - e. Important to have alternates.
 - f. Is revoked upon death.
- VI. What does a Health Care Power of Attorney do?
 - a. Someone is appointed to make health care decisions for you.
 - b. Appoint physician to determine if you are unable to make decisions.
 - c. Otherwise, may be some dispute who can make decisions.
 - d. Deals with all health decisions, not just life threatening.
 - e. Burial instructions, autopsy, mental health issues.
- VII. What does a Living Will do?
 - a. Addresses terminable and incurable or persistent vegetative state.
 - b. Gives physician authorization to withhold life prolonging measures.
 - c. Extraordinary means and artificial nutrition or hydration.
 - d. If chance of recovery, does not authorize withholding.
 - e. Supercedes decision making authority of Health Care Agent.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

WILL OF
<HUSBAND>

I, <HUSBAND> of WAKE County, North Carolina, declare this to be my will and revoke all earlier wills and codicils.

ARTICLE I
DISPOSITION OF ESTATE

A. **Gift of Tangible Personal Property.** All my tangible personal property that was not held by me solely for investment purposes, including, but not limited to, my automobiles, household furniture and furnishings, clothing, jewelry, collectibles and personal effects, shall be disposed of as follows:

1. I give all such tangible personal property to my wife, <WIFE>, if she survives me.
2. If my wife does not survive me, I give all such tangible personal property (i) to my children who survive me to be divided among them by my Executor in shares of as nearly equal value as may be practicable or (ii) to the survivor of my children if but one of them survives me.
3. I may leave a writing which, although not a part of my will, expresses my desires concerning the disposition of my tangible personal property. I request, but do not require, that my wishes as set forth in any such writing be observed.
4. The costs of safeguarding, insuring, packing, storing and delivering my tangible personal property to any beneficiary under this Paragraph shall be paid from my estate as expenses of administration.

B. **Gift of Residuary Estate.** I give my residuary estate, being all my real and personal property, wherever located, not otherwise effectively disposed of, but without exercising any power of appointment over property which I may have, as follows:

1. I give my residuary estate to my wife, <WIFE>, if she survives me.
2. If my wife does not survive me, I give my residuary estate to my issue who survive me, per stirpes.
3. If I am survived neither by my wife nor by issue of mine, I give (i) one-half (1/2) of my residuary estate to the person or persons who would have been entitled to receive my personal property under the laws providing for the distribution of property in case of intestacy had I died intestate at that time owning the property, unmarried and domiciled in North Carolina, and (ii) one-half (1/2) of my residuary estate to the person or persons who would have been entitled to receive my wife's personal property under the laws providing for the distribution of property in case of intestacy had my wife, <WIFE>, died intestate at that time owning the property, unmarried and domiciled in North Carolina.

ARTICLE II
TRUST FOR BENEFICIARY UNDER AGE TWENTY-ONE

If a share of my residuary estate is given outright to a beneficiary who has not reached the age of twenty-one (21) at the time of my death, such share shall not be distributed to the beneficiary but, instead, I give such share to the Trustee named below to be held in trust for the benefit of the beneficiary, together with any other property payable to the Trustee as a result of my death for the benefit of the beneficiary, and disposed of as follows:

A. **Distribution Until Beneficiary Reaches Age Twenty-one or Dies.** Until the beneficiary reaches the age of twenty-one (21) or sooner dies,

1. The Trustee may distribute all or any portion of the trust property to the beneficiary in such amounts and at such times as the Trustee, in the Trustee's discretion, may determine. Any undistributed income may be added to the principal of the trust from time to time as the Trustee, in the Trustee's discretion, may determine.

2. As a guide to the Trustee and without limiting the Trustee's discretion, it is my desire that such discretion be exercised for such purposes as the Trustee shall deem reasonable and appropriate for the welfare, enjoyment and education of the beneficiary. The Trustee may take into consideration other financial resources of the beneficiary but is not required to do so.

B. **Distribution When Beneficiary Reaches Age Twenty-one or Dies.** When the beneficiary reaches the age of twenty-one (21), the Trustee shall distribute the then remaining trust property to the beneficiary. If the beneficiary dies before reaching such age, then upon the death of the beneficiary, the Trustee shall distribute the then remaining trust property to the estate of the beneficiary.

ARTICLE III PAYMENT OF DEBTS, EXPENSES AND DEATH TAXES

A. **Payment of Debts and Expenses.** All my debts, health care expenses, funeral expenses and the administration expenses of my estate shall be paid out of my residuary estate. I authorize my Executor, in her discretion, to spend more than is otherwise allowed by law for a suitable gravestone and for perpetual care of the lot upon which my grave is located.

B. **Payment of Death Taxes.** All death taxes (other than death taxes which are paid from property passing outside of this will pursuant to the terms of the governing instrument) shall be paid out of my residuary estate as an administration expense and shall not be charged against or recovered from any recipient or beneficiary of the property taxed, except that my Executor shall recover as provided by law any death tax attributable to property (i) over which I have a power of appointment, (ii) in which I have a qualifying income interest for life or (iii) in which I have a retained interest for life to the extent that any death tax recoverable by law is not otherwise paid out of such property.

ARTICLE IV THE FIDUCIARIES

A. **Appointment of Executor.** I appoint my wife, <WIFE>, to be my Executor. If she falls or ceases to act for any reason, I appoint my _____, <EXECUTOR>, of _____, to be my Executor. If it becomes necessary for a representative of my estate to qualify in any jurisdiction other than the State of North Carolina in which my Executor shall be unable or unwilling to qualify as Executor, then my Executor shall have the right to appoint an individual or corporate representative of my estate in such jurisdiction.

B. **Appointment of Trustee.** I appoint my _____, <TRUSTEE>, of _____, to be Trustee of any trust established under this will. The Trustee shall have the right to resign without court order at any time in a writing signed by the Trustee, such resignation to be effective upon the acceptance of the trusteeship by a successor Trustee. The Trustee shall also have the right to appoint without court order a successor individual or corporate Trustee in a writing signed by the Trustee which states the event or events upon which the successor Trustee shall act.

C. **Waiver of Bond and Court Supervision.** No bond or other security shall be required from any fiduciary. Any fiduciary may act without qualifying before any court or filing with any court any inventory, accounting or other report relating to the administration of my estate or any trust unless otherwise required by law to do so.

D. **Compensation of Fiduciary.** A corporate fiduciary may receive compensation for its services in accordance with its published schedule of fees in effect at the time the services under this will are rendered. An individual fiduciary may receive that compensation for such fiduciary's services which are allowed by law at the time the services under this will are rendered.

ARTICLE V ADMINISTRATIVE POWERS OF FIDUCIARIES

In addition to the powers conferred by law or elsewhere in the will, I grant to my Executor with respect to the property in my estate, regardless of whether title to any real property passing under this will is vested in my Executor, the discretionary powers set forth below to be exercised without court order for any purpose that my Executor may deem advisable:

A. **Powers Incorporated by Reference.** Subject to North Carolina General Statutes Section 32-26, all the powers set forth in North Carolina General Statutes Section 32-27 as they exist at the time that I sign this will, and such powers are incorporated by reference with the same effect as though set forth verbatim in it; and

B. **Distributions to or for the Benefit of a Beneficiary.** Whenever authorized or directed to distribute property to a beneficiary, whether or not under a legal disability, the power to distribute such property, unless otherwise directed, (i) directly to such beneficiary, including the transfer of property into such beneficiary's name as by depositing cash or registering securities in his or her name, (ii) to a custodian or custodial trustee for such beneficiary under a uniform gifts or transfers to minors act or uniform custodial trust act, including a custodian or custodial trustee designated by the fiduciary, which may be the fiduciary, (iii) to the guardian or conservator of such beneficiary's estate, or (iv) to any other person, firm or institution for the benefit of such beneficiary, and the receipt of any of the foregoing shall constitute a full acquittance of the fiduciary to the extent of the distribution so made.

ARTICLE VI PRESUMPTION OF SURVIVORSHIP

If any beneficiary under this will and I should die under such circumstances that there is uncertainty as to which person predeceased the other, it shall be conclusively presumed for the purposes of this will that such beneficiary predeceased me.

ARTICLE VII DEFINITIONS

For purposes of this will,

A. **"Executor", "Trustee" and "Fiduciary".** The term "Executor" or "Executors" includes any personal representative or representatives of my estate acting under this will such as a successor Executor or Executors and any Administrator with the will annexed. It also includes the term "Executrix" whenever the context requires it. The term "Trustee" or "Trustees" includes any Trustee or Trustees acting under a trust to which property passes pursuant to this will, and the term "fiduciary" or "fiduciaries" includes both an Executor and a Trustee.

B. **"Death Taxes".** The term "death taxes" means inheritance, estate, transfer and succession taxes, and any interest and penalties on these taxes, imposed by reason of my death by any jurisdiction with respect to property passing under or outside of the provisions of this will or any codicil to it which is includable in my estate for the purpose of determining such tax, including, but not limited to, any tax on property includable under section 2036 (relating to transfers with retained life estate), section 2041 (relating to powers of appointment), section 2042 (relating to life insurance proceeds) or section 2044 (relating to qualified terminable interest property) of the Internal Revenue

Code of 1986, as amended, or any comparable provision of state law, but excluding, however, any tax imposed by section 2032A(c) (relating to qualified real property), Section 2057(f) (relating to qualified family-owned business interest), or chapter 13 (relating to generation-skipping transfers) of the Code, or any comparable provision of state law.

C. **“Child”, “Children” and “Issue”.** At the time of the execution of this Will, I have _____ () child(ren): _____ and _____. The terms “child” and “children” mean lawful lineal blood descendants in the first degree of the parent designated, including any after born child or children, and the term “issue” means lawful lineal blood descendants in any degree of the ancestor designated, but such terms shall include any person legally adopted prior to the time that person reaches the age of eighteen (18) and the lawful lineal descendants of any such person, whether of the blood or by adoption prior to such age.

D. **“Per Stirpes”.** Whenever a distribution is to be made under this will to a designated ancestor’s issue who are living at a designated time, and such distribution is to be made “per stirpes”, such distribution shall be made by first determining the generation nearest to such ancestor which has a person who represents that generation and who is living at the designated time. The property to be distributed shall be divided into as many equal shares as may be necessary to allocate one share to each then living person of that generation and one share to each deceased person of that generation who left issue who are then living. Each living person of that generation who has not effectively disclaimed his or her share for federal tax purposes shall receive one share, and the share of each deceased person of that generation and of each living person of that generation who has effectively disclaimed his or her share shall be divided among his or her then living issue in the same manner.

E. **“Trust Property”.** Unless the context indicates otherwise, references to “trust property” mean the net undistributed income and principal of the trust.