

## Information and Instructions regarding your FREE Simple Will

### Basic Terms and Concepts

A will is a legal document that expresses—to the best of one's ability in written language—how they want their property distributed after their death. The language a person chooses in their will is the final expression of their intent, which is considered paramount in any dispute over distribution of a decedent's property. The will may pass property to specific individuals ("my son Joseph") or to individuals ascertainable at death ("to my children") according to instruction.

The will may pass real property separate from personal property, or leave it commingled for sorting out by those who inherit. Dispositions of personal property in a will are known as bequests ("I bequeath my Renoir painting"); dispositions of real property (i.e. land and things affixed to it) are called devises (and the recipient, a devisee) ("I devise my interest in the land"). Technically, a devisee inherits real property, while a legatee inherits personal property. Despite this technicality, "legatee" is often used in North Carolina to describe a person who takes any sort of property pursuant to a will.

One who dies having executed a legally valid will is known as a testator (male) or testatrix (female), whereas one who dies without a valid will is known as having died intestate (gender neutral). If the latter, the person's assets are distributed according to the state intestate succession law, which defines distribution among individuals by class according to their relationship to the decedent. If a person's written will fails under a successful challenge in a court action (called a "caveat"), the decedent's assets will be distributed according to intestate succession law.

The will also identifies the person whom the decedent wishes to "execute" their instructions to distribute property—known as an executor (male) or executrix (female), or personal representative (gender neutral)—to their legatees. This office—which is a fiduciary position of public trust—is monitored (in North Carolina) by the County Clerk of Court. For people with minor children, the will is the opportunity to suggest a chosen personal and financial guardian for the minor children, as well as establish a vehicle—called a testamentary trust—for how their assets will be managed until adulthood.

A person may make as many wills as they care to during their lifetime, so long as the person remains competent. Generally, the last will executed among several over time is the will which legally expresses the testator's last wishes, even if an earlier executed will—with different property dispositions—is produced. (Wills are often updated by amendment, known as a codicil, or rewritten and executed entirely; any will superseded by another should be destroyed to avoid confusion.) Until the death of the testator, a will is simply a piece of paper with no legal significance and serves as no binding directive by the testator of an eventual disposition of property. The "will speaks at death" is a common phrase to describe this situation, where a living person—though having committed their intended bequests and devises to written words—has not yet expressed their final voice as to what they want to happen to their property when they die. At their death the will in that moment becomes the

only expression of that intent and becomes the last word when the testator can no longer speak. In line with this concept, no living person has heirs, or devisees even though such people are identified in an executed will; such status forms only upon the death of the testator, and until then everyone is a potential legatee.

Though there are various methods of transferring property at death—use of a trust, jointly titled property, pay-on-death designations—the will remains the centerpiece of an estate plan. Given the difficulty of disposing of all property—real and personal and wherever situated—prior to death, the will at least sets about a controlled process for legal authority to dispose of all that one owned, even the junk. As discussed below, for the survivors, even an imperfect will can be preferable to no will at all.

Lastly, because a will is a static document, an expression of intent captured at its execution under the feelings and emotions and relationships as they exist at that time, wills should be continually revisited. A common period expressed is "every five years," but really upon occurrence of a major life event: the birth of children, the death of children, death of a spouse, acquisition of new property (say by inheritance), the change of plans by a farm or other family business successor, or the supposed increase in value of certain property. While such events may be captured as disposition contingencies, the language in the static will is not likely to capture any changes that would undoubtedly modify the intent of the would-be testator. For example, a will drafted shortly after marriage and when children are young hardly captures the state of affairs as the children are exiting college and starting their own families. Likewise, the planned disposition of certain real property or farm assets to the expected farming successor may change if that person dedicates to a new career. The execution of a will is an accomplishment coupled with an expectation that it will be modified, or another drafted and executed as part of a lifetime of wealth acquisition and planning for its eventual disposal.

### Dying Without a Will

As noted above, for those who do not execute a will to provide direction of their assets, the state of North Carolina has provided a substitute in the Intestate Succession Act. Intestate succession is largely based on lineal descent and has the effect of preserving the shares of predeceased lineal descendants in favor of those individuals' living lineal descendants. The primary share preservation is to a surviving spouse, and the amount of that share depends on whether there are children to the marriage. The distribution schemes are numerous based on the surviving legal heirs as determined by the statute. For a decedent with no legal heirs under the intestate statute, the assets escheat to the State of North Carolina's Escheat Fund for the benefit of the University of North Carolina per the North Carolina Constitution.6

### Types of Wills

North Carolina statute states simply that "[a]ny person of sound mind, and 18 years of age or over, may make a will." There are three types of wills in North Carolina: 1) an attested will, 2) a holographic will, and 3) a nuncupative will. A holographic will is a will written and attested (signed) entirely in the person's own handwriting. A nuncupative will is expressed

orally by an individual on their deathbed (in their "last sickness or in imminent peril of death, and who does not survive such sickness or imminent peril") in the presence of two competent witnesses together called for the specific purpose of witnessing the dying person's verbal testament. A nuncupative will may only dispose of personal property (anything but land). An attested will is that document normally thought of as a will created by a lawyer at the client's direction, and typewritten.

An attested will relies on the presence of two adults, who must bear witness to the would-be testator's signature to the will. At an earlier time in history, such witnesses were called to testify before the officer (magistrate or clerk) responsible for overseeing the probate proceedings. In modern times—to overcome the problem of witnesses who may not survive a testator or otherwise cannot be located—North Carolina recognizes what is known as a self-proving will, whereby the two witnesses and the testator all sign the will in the presence of a notary public, who makes their own attestation (recognized by the state as a trustworthy affidavit) that the testator and the witnesses were indeed there to sign in the others' presence, and the signatures are indeed theirs. Witnesses to an attested will (as well as a nuncupative will) must be disinterested, meaning that they or their spouse have no inheritance from the will. (An interested person—inheriting under the will—is not disqualified as a witness, but there must also be two disinterested witnesses; if there is only an interested and a disinterested witness, the interested witness—if the will is probated—loses all inheritance under the document).

#### Instructions for using this free will.

1. Fill in the blanks on the will form completely. **DO NOT SIGN THE WILL OR INITIAL THE BOTTOM OF THE PAGE UNTIL YOU HAVE YOUR NOTARY AND WITNESSES PRESENT.**
2. **THE WITNESSES MUST BE DISSINTERED WITNESSES**, meaning they or their spouse will not receive anything in your will.
3. Once you have filled out the will form legibly, and have **ALL** your witnesses and the notary present, you may sign the will in the **two places** and **initial each page at the bottom of the page**. The witnesses will need to sign in your presence and the presence of the notary. Just do it all at the same time and be sure the witnesses provide their addresses and phone numbers as provided in the form.
4. After completion of signatures and your initials on each page, make copies. Don't lose it and make sure your authorized agent either knows where it is or has a copy of it. If you are concerned about that, the Clerk of Superior Court in each county has a depository for original wills. For a small fee, any person may take their original will to the Clerk and ask that it be deposited with the Clerk for safekeeping. If this has been done, the Clerk will give the person depositing a will a receipt in exchange for the will. That receipt will outline whose will has been deposited, the date on which it was deposited, and the County where it was deposited. Under the statute, once the will has been deposited, the only people that may access it while the person who created

the will (the "Testator") is living are the Testator, their authorized agent, or their attorney. This isn't technically "recording" the Will, but it is deposited somewhere.

#### Other thoughts.

5. This is a simple will. It does not provide for:
  - a. A guardian or trust for minor children.
  - b. Specific gifts of personal property.
  - c. Avoidance of probate; even with a will, your will must be probated which does cost money, may require an attorney, and can often take months to complete. And is public.
6. You may need or would benefit from the following estate documents.
  - a. A durable (financial) power of attorney which is when someone is appointed to take care of your finances during your lifetime when you are unable.
  - b. A designation of Guardian, which allows you to select who will care for you or your children if you are unable to.
  - c. MVR-620 which allows your spouse to automatically have titled ownership to any titled vehicle which is titled in both of their names. Absent this form, you would have to go to probate court to get the title.
  - d. If you have a safe deposit box, you would be well advised to ensure that someone else's name is on it to get access to it upon your death.
  - e. A Trust is often the better option for estate planning which can handle ALL the issues above. Though more expensive initially, having a Trust probate completely and may also be prepared to avoid losing your home for those who use Medicaid to pay for long-term care such as nursing home stays or in-home health care.



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LAST WILL AND TESTAMENT OF

\_\_\_\_\_  
The Name of the Testator

THE STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_  
(where signed)

§  
§ KNOW ALL MEN BY THESE PRESENTS  
§

THAT I, \_\_\_\_\_, the Testator, residing and being domiciled in \_\_\_\_\_ County, North Carolina, being of sound mind and memory, hereby revoke all previous Wills and Codicils made by me, and hereby make, declare and publish this my Last Will. ITEM I

1.1 I appoint \_\_\_\_\_, as Executor(ix) of this Will and of my estate.

1.2 If \_\_\_\_\_ should fail or cease to serve as my Executor(ix) for any reason, then I appoint \_\_\_\_\_, as Executor(ix) of this Will and of my estate.

1.3 My Executor(ix) shall be authorized to carry out all provisions of this Will without the requirement of posting bond. Furthermore, prior to distribution of my property hereunder, such Executor(ix) shall pay all my just debts, obligations, and funeral expenses as soon as reasonably practical. I direct that my Executor(ix) may cause any debt to be carried, renewed, and refinanced from time to time upon such terms and with such securities for its repayment as my Executor(ix) may deem advisable taking into consideration the best interest of the beneficiaries hereunder. If at the time of my death any of the real property herein devised is subject to a mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my estate.

1.4 My Executor(ix) shall receive no personal compensation for his/her services but shall be reimbursed for all proper and necessary expenses, including but not limited to travel and hotel expenses, incurred in the performance as Executor(ix) of this Will and of my estate.

ITEM II

2.1 I give, devise, and bequeath my entire estate of whatsoever nature and wheresoever situated, to \_\_\_\_\_.

2.2 If \_\_\_\_\_ should predecease me, then I give, devise and bequeath my entire estate of whatsoever nature and wheresoever situated, to \_\_\_\_\_.

2.3 If all my beneficiaries predecease me, I give, devise and bequest my entire estate to my heirs at law.

ITEM III

If any beneficiary and I should die simultaneously, under such circumstances that the order of our deaths cannot be determined, then all bequests, devises, and provisions made herein or for the benefit of said beneficiary shall be void and my entire estate shall pass as though said beneficiary had predeceased me.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Testator's signature

IN WITNESS WHEREOF, I \_\_\_\_\_, the Testator, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last Will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator's Signature

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, we \_\_\_\_\_, \_\_\_\_\_, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his/her last Will and that he/she signs it willingly (or willingly directs another to sign for him/her), and that each of us, in the presence and hearing of the Testator, hereby signs this Will as witness to the Testator's signing, and to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
ADDRESS

PHONE NUMBER: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
ADDRESS

PHONE NUMBER: \_\_\_\_\_

CERTIFICATE

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_  
County, North Carolina, sworn to and acknowledged by me by \_\_\_\_\_,  
Testator and \_\_\_\_\_, witness and \_\_\_\_\_ witness on  
this the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Printed Name of Notary

Notary Public (Official Seal)