

# **WILLS – GENERAL GUIDELINES**

## **AND DEFINITIONS**

### **Testator**

This is the individual making the Will.

### **Executors**

An executor is the person named in a will to carry out the instructions contained in the will. They are responsible for settling the testator's affairs after death.

We recommend that you name at least one Alternate Executor in case the first Executor is unable or unwilling to act. A second or even third Alternate is simply optional.

### **Guardians for Children under 18**

If you have children under 18, and you are currently married, the first Guardian will usually be your spouse, and alternate could be another family member or trusted friend. As with the Executor, we recommend you list at least one alternate Guardian.

**Note:** If you do not name an alternate Guardian, and both you and your spouse die, the court will determine who will care for your children who are under 18 at the time of your death.

### **Specific Gifts/Bequests**

If you wish, you may make specific gifts/bequests, both material and monetary, to friends, family members or favored charities, in your Will.

### **Residuary Beneficiaries**

After all taxes and specific gifts/bequests are paid/delivered, what remains is known as the "rest and residue" of the Estate. In most cases, the primary residuary beneficiary is the spouse of the deceased, with secondary beneficiaries generally being their children, with the money being held in trust until they are 18 years old, if applicable.

In any event, you will determine how your estate is distributed to the residuary beneficiaries.

**Note:** Your spouse is legally entitled to 50% of your estate, and can contest your Will if you do not take this into account when preparing your Will.

### **WIPE OUT CLAUSE**

In the remote chance that a common accident results in the death of all of your beneficiaries, how would you want your assets to be distributed?

## **YOUR PERSONAL DIRECTIVE (PD) AND ENDURING POWER OF ATTORNEY (EPA)**

When you have your Will done, it is highly recommended that you also complete a Personal Directive and an Enduring Power of Attorney. These documents allow you to decide who gets to make decisions for you if you become incapable of doing so yourself.

### **PERSONAL DIRECTIVE**

A Personal Directive (PD) allows you to appoint an Agent in advance who will make personal, non-financial, decisions on your behalf if you ever lose the capacity to do so yourself, due to either illness or injury. These include matters such as your health care, where you reside, and with whom you have contact

If you do not have a Personal Directive and you become incapacitated, someone may have to make a court application to be appointed as your guardian. Such court applications take time and are often expensive. Additionally, the people who have priority to apply for guardianship may not be the persons whom you would want making personal decisions for you.

A Personal Directive allows you to maintain greater control over your personal matters.

### **ENDURING POWER OF ATTORNEY**

An Enduring Power of Attorney (EPA) allows you to appoint someone to make financial decisions on your behalf if you lose the capacity to do so yourself due to either illness or injury. This person is called your Attorney. EPAs come in two forms: Immediate and Contingent.

**Immediate:** Your attorney has the power to make decisions immediately. You and your Attorney have control over your money – you can both write cheques, sign documents, etc. If you ever lose the capacity to make decisions, your attorney can step in and make them for you.

**Contingent:** In this case, your attorney only gains the ability to make decisions for you if you lose capacity. Should you regain capacity, you can take back the power to make your own decisions.

The money is still yours, and your Attorney must keep records of all financial decisions made on your behalf.

***It is recommended that your Agent and/or Attorney be a trusted friend or family member. Usually the individuals you named as Executor and Alternate Executor in your Will.***

### **What is Capacity?**

Capacity is the ability to understand the facts that should be considered when making a decision, and what could happen if you choose one option over another.

Capacity is assessed by either a person named by you, usually a family physician, or if you do not name anyone, or the person you have named is unavailable, 2 medical practitioners can make the decision. They will then sign a Declaration of Incapacity form.

***If we are preparing a PD and an EPA for you, please indicate your wishes regarding your Agent and Attorney on the form below by marking P1/E1 for your primary choice, and P2/E2 for your alternates.***

**WILL INSTRUCTIONS**

1. YOUR NAME: \_\_\_\_\_  
COMPLETE ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
Telephone Number(s): \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_
  
2. EXECUTOR: \_\_\_\_\_  
RELATIONSHIP: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
Telephone Number(s): \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_
  
3. 1<sup>ST</sup> ALTERNATE EXECUTOR: \_\_\_\_\_  
RELATIONSHIP \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
Telephone Number(s): \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_
  
4. 2<sup>ND</sup> ALTERNATE EXECUTOR \_\_\_\_\_  
RELATIONSHIP \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
Telephone Number(s): \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_
  
5. GUARDIAN(S) FOR CHILDREN UNDER 18 – Include name, relationship, full  
address, and phone number(s):
  1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. **BENEFICIARIES:**

**Specific Gifts/Bequests (if any):** State the name of the beneficiary, the nature of the gift, and current city of residence.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**Residuary Beneficiaries:** State the name of the beneficiary and their current city of residence. If there are multiple beneficiaries, clearly state how the Estate is to be divided (Percentages must add up to 100%).

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

7. **WIPE OUT CLAUSE –** If none of your residuary beneficiaries survive, whom do you wish to receive your assets?

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

8. **ADDITIONAL CLAUSE(S)** [Any additional clauses you wish to add to your will, such as specific burial requests]

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\_\_\_\_\_

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