

# LAST WILL AND TESTAMENT

OF

[CLIENT'S NAME]

I, [Client's Name], of the County of \_\_\_\_\_ and the State of \_\_\_\_\_, being of sound and disposing mind and memory, do make and declare this instrument to be my Last Will and Testament, hereby expressly revoking all former Wills and Codicils made by me at any time heretofore, and intending hereby to dispose of all the property of whatever kind and wherever situated which I own, or in which I have any kind of interest at the time of my death.

## I.

### IDENTITY OF THE FAMILY

At the time of the execution of this Will, I [am/am not] married and I have \_\_\_\_\_ children. My spouse is \_\_\_\_\_ (name of spouse). All references in this Will to "my spouse" are to \_\_\_\_\_ (name of spouse). All references in this Will to "any children" are to \_\_\_\_\_, \_\_\_\_\_, and to all children hereafter born to or adopted by me.

## II.

### PAYMENT OF EXPENSES

I direct that all the expenses of my last illness, my funeral expenses, and my just personal debts, including any inheritance taxes, transfer taxes, and estate taxes that may be levied by the \_\_ (Country of Resident) \_\_ Government or by any state/region by reason of my death, shall be paid by my Independent Executor out of the residue of my estate as soon as conveniently may be done; provided that my Independent Executor, in such Executor's sole discretion, may distribute from time to time any real or personal property in my estate that at my death is subject to a lien securing an indebtedness upon it without discharging said indebtedness, if in my Independent Executor's judgment, the condition of my estate so requires. The distributee shall then be considered as having received my estate's equity in the property.

## III.

### DISPOSITION OF ESTATE

A. I give, devise and bequeath all of my estate of whatsoever kind and wheresoever situated as follows: I leave all of my property, both real and personal, tangible and intangible, to [Name 1]. If [Name 1] should fail to survive me, I leave all of my property, both real and personal, tangible and intangible, to [Name 2]. If [Name 2]

should likewise fail to survive me, I leave all of my property, both real and personal, tangible and intangible, to [Name 3].

B. I may provide instructions in a Letter to my Independent Executor as to the disposition of some of my personal and household effects. While I hope that the beneficiary named above will abide by my wishes as expressed in the Letter, it is merely an expression of my wishes and is not intended to alter the absolute nature of any bequest contained in this, my last Will and Testament.

C. Any other property of mine that has not been disposed of under any other provision of this Will shall go and be distributed to my heirs-at-law determined as of thirty days after the date of my death.

#### IV.

#### DEFINITION OF SURVIVAL

Any legatee, devisee, donee, person, or beneficiary with respect to all or any part of my estate who shall not survive until thirty days after the date of my death shall be deemed to have predeceased me, and shall be treated for all purposes herein as though such person had predeceased me.

#### V.

#### APPOINTMENT OF EXECUTOR

I hereby nominate, constitute, and appoint [Executor] as Independent Executor of my estate. In the event that [Executor] shall predecease me or fail or refuse to qualify, or die, resign, or become unable to serve during the administration of my estate, I hereby nominate, constitute, and appoint [Alternate 1] as Independent Executor, and all the powers, duties, and responsibilities granted and imposed upon [Executor] shall devolve upon and be exercised by [Alternate 1]. [In the event that [Alternate 1] shall likewise predecease me or fail or refuse to qualify, or die, resign, or become unable to serve during the administration of my estate, I hereby nominate, constitute, and appoint [Alternate 2] as Independent Executor, and all the powers, duties, and responsibilities granted and imposed on [Alternate 1] shall devolve upon and be exercised by [Alternate 2].]

If any individual Independent Executor becomes unable to discharge [his/her] duties under this Will because of accident, physical or mental illness or deterioration, or other cause and does not resign, then upon certification in a form sufficient for the recording of a deed in the State of Texas by two medical doctors (neither of whom is a beneficiary under this Will) affirming that each has examined the Independent Executor and that each has concluded, based on such examination, that the Independent Executor is unable to discharge [his/her] duties under this Will, the Independent Executor shall cease to serve, as if [he/she] had resigned, effective the date of the certification.

It is my will and desire and I hereby direct that in the administration of my estate, my Independent Executor or any successor shall not be required to furnish any bond of any kind and that no action shall be had in the county court or other probate court in relation to the settlement of my estate other than the probating and recording of this, my Last Will and Testament, and the return of any Inventory, Appraisement, and List of Claims of my estate.

## VI.

### POWERS OF EXECUTOR

In addition to all of the powers vested by law in independent executors, my Independent Executor or any successor named above, shall specifically, without limitation, have the following powers with respect to all properties my Independent Executor administers:

A. I hereby grant unto my Independent Executor or any successor named above, full power and authority over any and all of my estate and [he/she] is hereby authorized to sell, manage, and dispose of the same or any part thereof, and in connection with any such sale or transaction, make, execute and deliver proper deeds, assignments and

other written instruments and to do any and all things proper or necessary in the orderly handling and management of my estate.

B. My Independent Executor or any successor named above, shall have full power and authority to compromise, settle and adjust any and all debts, claims, and taxes which may be due from or owing by my estate.

C. My Independent Executor or any successor named above, shall have full power and authority to deal with any person, firm, or corporation.

D. My Independent Executor or any successor named above, shall have full power to borrow money at any time and in any amount from time to time for the benefit of my estate, from any person, firm, or corporation or from any bank or trust company and to secure the loan or loans by pledge, deed of trust, mortgage, or other encumbrances on the assets of the estate and from time to time to renew such loans and give additional security.

E. In addition to, and not in limitation of, the foregoing, my Independent Executor shall have all powers conferred by law upon personal representatives of estates, and shall have all powers conferred upon trustees by the Texas Trust Act.

F. As compensation for [his/her] service hereunder, my Independent Executor or any successor named above shall be entitled to charge the same fees customarily charged for similar services in other estates at the time the services are rendered.

**VII.**

**SPENDTHRIFT PROVISION**

No interest of any beneficiary in the corpus or income of my estate shall be subject to assignment, alienation, pledge, attachment, or claims of creditors of such beneficiary and may not otherwise be alienated or encumbered by such beneficiary, except as may be otherwise expressly provided herein.

**VIII.**

**IN TERROREM CLAUSE**

If any beneficiary under this Will shall in any manner contest or attack this Will or any of its provisions, any share or interest in my estate given to such contesting beneficiary under this Will is hereby revoked and such contesting beneficiary shall receive no part of my estate.

**IX.**

**DEFINITIONS AND INTERPRETATIONS**

For purposes of interpretation of this, my Last Will and Testament, and the administration of the estate established herein, the following provisions shall apply:

A. The words "child, children, descendants, issue," and similar terms shall be deemed to include such a person in gestation at the applicable time and later born alive, as if that person were living at the applicable time. An adopted person [if adopted before the age of eighteen] and that adopted person's lawful descendants are lawful descendants of each adopting parent of that person and are lawful descendants of anyone who is by blood or adoption an ancestor of that adopting parent.

B. When a distribution is directed to be made to any person's descendants "per stirpes," that property shall pass equally to that person's children living at the applicable time or all to that person's child if only one is then living; provided that if any child of that person is not then living but has issue then living, the property which would have passed to that deceased child if he or she were then living shall pass instead to his or her issue then living, per stirpes; provided further that in determining the class comprised of such issue, no issue of a living person included in that class shall be included therein.

C. A provision that property is to pass to a person's "heirs at law" determined as of a certain time means that the property shall pass to those persons then living who would have been, under the laws of the State of Texas in force on the date of this Will, heirs at law of that person's separate personal estate, had that person died intestate at that time, in the proportions they would have received the same had they been that person's sole heirs at law.

D. The use of the masculine, feminine, or neuter gender shall be interpreted to include the other genders, and the use of either the singular or the plural number shall be interpreted to include the other number, unless such an interpretation in a particular case is inconsistent with the general tenor of this instrument. Any references herein relating to my Independent Executor shall include [his/her] successors regardless of the gender of the successors.

E. This Will shall be probated in accordance with the laws of Texas, and should any provisions of the same be held unenforceable or invalid for any reason, the unenforceability or invalidity of said provision shall not effect the enforceability or validity of any other part of this Will.

IN TESTIMONY WHEREOF, I hereunto sign my name to this, my Last Will and Testament, consisting of ( ) typewritten pages (including the pages containing the attestation clauses and the self-proving affidavit), each of which pages I am initialing or signing for the purpose of identification, all in the presence of \_\_\_\_\_ and \_\_\_\_\_, who witness the same at my request, in my presence, and in the presence of each other, on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_

[Client's Name], Testator

#### ATTESTATION

The foregoing instrument was, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2003, made and published as the Last Will and Testament of [Client's Name], Testator, and is signed and subscribed by the said [Client's Name], in our presence, and we, the undersigned, at [his/her] request, and in [his/her] presence, and in the presence of each other, sign and subscribe our names hereto as attesting witnesses.

Witness Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Address \_\_\_\_\_

SELF-PROVING AFFIDAVIT

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally appeared [Client's Name], [Name of Witness number one] and [Name of Witness number two], known to me to be the Testator and the Witnesses, respectively, whose names are subscribed to the foregoing instrument in their respective capacities, and all of said persons being by me duly sworn, the said [Client's Name], Testator, declared to me and to said Witnesses in my presence that said instrument is [his/her] Last Will and Testament and that [he/she] had willingly made and executed it as [his/her] free act and deed for the purposes therein expressed; and the said Witnesses, each on his or her oath, stated to me in the presence and hearing of the said Testator that the said Testator had declared to them that said instrument is [his/her] Last Will and Testament and that [he/she] had executed it as such and wanted each of them to sign it as a Witness; and upon their oaths, each Witness stated further that they did sign the same as Witnesses in the presence of the said Testator and at [his/her] request; that said Testator was at that time eighteen (18) years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said Witnesses was then at least fourteen (14) years of age.

\_\_\_\_\_  
Client's Signature, TESTATOR

\_\_\_\_\_  
[Client's Name]

Witness Signature \_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE ME by the said [Client's Name], Testator, and SUBSCRIBED AND SWORN TO BEFORE ME by the said [Name of Witness number one], and [Name of Witness number two], Witnesses, on this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary, State of Texas