

**Information & Instructions: Long will with a family trust and an outright marital deduction gift**

# PREVIEW

1. The following will is an expanded and enlarged version of the preceding will with a family Trust. It includes much longer powers and duties for the Trustee and longer and more detailed administrative and general provisions. Some clients and practitioners prefer the longer version, as opposed to the shorter version.
2. If estate tax savings are desired, use this Will since it contains a marital deduction trust and contains tax planning devices which should benefit larger estates.
3. This Will form is appropriate where the net assets of the husband and wife added together exceed the federal exemption equivalent. Projected life insurance proceeds should be included in estimating the projected taxable estate unless the proceeds are in a separate life insurance trust where the insured has no "incidents of ownership". Since the estate may be taxable, the attorney should consider estate planning techniques such as a "credit shelter trust".
4. Use of the credit shelter trust is intended to save estate taxes that would otherwise be payable when both spouses have died. If the total net estate assets of the husband and wife exceed the husband's and wife's joint federal exemption equivalent amounts, then the clients may wish to consider both a marital trust and generation skipping trusts. Documents for such extensive planning are beyond the scope of this work.

**ESTATE PLANNING AND THE PREPARATION OF WILLS AND TRUSTS  
REQUIRES A THOROUGH KNOWLEDGE OF WILL DRAFTING  
PRINCIPLES, ESTATE PLANNING, AND TAX LAW.**

# THIS DOCUMENT

**THIS DOCUMENT MAY CONTAIN PROVISIONS WHICH HAVE TAX OR  
OTHER CONSEQUENCES BECAUSE THE ATTORNEY, EXECUTOR OR  
CLIENT MAY HAVE TO MAKE DECISIONS OR ELECTIONS WITHIN TIME  
FRAMES SET FORTH IN STATE OR FEDERAL LAWS INCLUDING THE  
INTERNAL REVENUE CODE.**

**IT IS ESSENTIAL THAT THE WILL OR TRUST CHOSEN IS APPROPRIATE  
FOR YOUR INDIVIDUAL CLIENT'S PERSONAL AND TAX  
CONSIDERATIONS. SOME OF THE WILLS IN THIS PROGRAM MAY NOT  
HAVE SUFFICIENT OR COMPREHENSIVE TAX SAVING PROVISIONS  
WHICH MAY BE APPROPRIATE FOR YOUR CLIENTS. THE WILLS THAT  
HAVE TAX SAVING PROVISIONS MAY BE INSUFFICIENT FOR CLIENTS  
WITH POTENTIALLY LARGE ESTATES, ACCORDINGLY MORE IN DEPTH  
ESTATE PLANNING MAY BE NECESSARY.**

**IF THE TOTAL NET ASSETS OF THE HUSBAND AND WIFE EXCEED THE  
FEDERAL EXEMPTION EQUIVALENT, THEN THE CLIENTS MAY WISH TO  
CONSIDER BOTH A MARITAL TRUST AND GENERATION SKIPPING**

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TRUSTS. DOCUMENTS FOR SUCH EXTENSIVE PLANNING ARE BEYOND  
THE SCOPE OF THIS DOCUMENT AND CHAPTER.

**PREVIEW**

PLEASE CONSULT EXPERT TAX OR ESTATE PLANNING RESOURCES TO  
ASCERTAIN THAT THE DOCUMENTS PRODUCED BY THIS PROGRAM  
MEET YOUR CLIENT'S NEEDS.

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**THIS DOCUMENT**

**THANK YOU**

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Form: Long will with a family trust and an outright marital deduction gift

**PREVIEW**  
LAST WILL AND TESTAMENT  
OF [CLIENT'S NAME]

I, [Client's name] of [City], [County's name] County, Texas am over the age of eighteen (18) years of age.

At the time I signed this Last Will and Testament, I was of sound and disposing mind and memory. I was not acting under the undue influence of any person at the time that I signed this Last Will and Testament.

I make, publish and declare this instrument to be my Last Will and Testament. By signing this document, I revoke any and all former Will or Codicils previously made by me, if such documents existed prior to the signing of this Last Will and Testament.

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**1. IDENTITY OF [CLIENT'S NAME]'S FAMILY**

1.1 I am now married to [Client's spouse] and all references in this Will to "my spouse" are to [him or her].

1.2 I have [Number] children. Their names are as follows:

[List the children's names]

(a) All references in this Will to "my children" are to such children and to any children subsequently born to or adopted by me.

**THIS DOCUMENT**

[Optional clause: My spouse has [number] child[ren] by a former marriage named .] He or she [is or is not] considered a child of mine for purposes of inheritance under this Last Will and Testament.

1.3 I have [Number] grandchildren. All references to grandchildren in this will are to such grandchildren and to any other grandchildren subsequently born to or adopted by my children after the date this will is signed prior to my death.

1.4 I have [Number of or no] deceased children.

**2. PAYMENT OF FUNERAL EXPENSES AND TAXES**

**THANK YOU**

2.1 I direct that my funeral expenses shall be paid by my Executor as soon as practicable after my death.

2.2 All debts, funeral expenses, taxes and administration expenses including any interest and penalties, which may be payable by reason of my death or due at the time of my death shall be charge against and paid out of my residuary estate unless my spouse and children all agree to a different payment method. I do not intend specific gifts to be exempt from taxes and expenses.

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2.3 Payment for the above expenses shall not be made from the proceeds of any life insurance policies payable to my beneficiaries unless the insurance policy is payable to my estate instead of a named beneficiary.

2.4 My Executor is specifically given the right to renew and extend, in any form that my Executor deems best, any debt or charge existing at the time of my death.

### 3. PROPERTY BEING DISPOSED

3.1 It is my intention to dispose of all of my property that I may own or control including but not limited to all real and personal property or other interests, community and separate, which I have the right to dispose of by this Last Will and Testament.

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### 4. SPECIFIC BEQUESTS

[Does the client wish to make a specific gift Yes or No, if Yes then]

4.1 I make this specific bequest as follows: I give the following property [describe the property] to [state the person's name who shall receive the gift].

(a) Personal Belongings. I give all my personal belongings and household effects to my spouse. If my spouse fails to survive me, I give such items to my children who survive me, in equal parts.

[If No specific gift then]

**THIS DOCUMENT**

4.1 Personal Belongings. I give all my personal belongings and household effects to my spouse. If my spouse fails to survive me, I give such items to my children who survive me, in equal parts.

4.2 Marital Deduction Gift. If my spouse survives me, I give to [him or her], absolutely, an amount equal to the marital deduction needed to minimize any federal estate tax in my estate. I intend this gift to qualify for the estate tax marital deduction, so that any estate tax on the property in my estate may be deferred until after the death of my spouse. Any provision in this Will which may conflict with or fail of this intention shall either be disregarded or else shall be reconciled or amplified to accomplish this objective.

**THANK YOU**

4.3 Retirement Accounts of Spouse. If my spouse survives me, I give [him or her] all my interest in [his or her] employee or self-employed benefit plans and individual retirement accounts.

4.4 Insurance Policies. If my spouse survives me, I give [him or her] all my interest in any life insurance policy on [his or her] life.

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### 5. GIFT OF RESIDUE

5.1 Gift to Trust. If my spouse survives me, I give all the rest and residue of my estate and property to the Family Trust provided in this Will, IN TRUST, to be administered under the terms of such Trust.

5.2 Gift to Descendants. If my spouse fails to survive me, I give all the rest and residue of my estate and property to my descendants per stirpes. Distribution may be subject, however, to Trusts, as further described by other provisions of this Will.

5.3 Contingent Gift of Residue to Heirs at Law. If neither my spouse nor any descendant of mine survives me, then I give all of the rest and residue of my estate and property (including any lapsed gifts) to the following persons [other beneficiaries' names and amounts or to share and share alike in equal shares].

(a) If all of the above persons, should predecease me, then I give all of the rest and residue of my estate and property (including any lapsed gifts) to those persons who are living one hundred eighty (180) days after the date of my death and who would have been my heirs at law had I died intestate and single at such time.

## 6. FAMILY TRUST

6.1 Name. If the Family Trust comes into existence under this Will, it shall be called by my name.

6.2 Primary Beneficiary. My spouse shall be the primary beneficiary of such Trust during [his or her] lifetime. Any doubt in making any distribution of principal or income shall be resolved in [his or her] favor, to the exclusion of other beneficiaries if necessary in the judgment of the Trustee.

6.3 Distribution of Income and Principal. My Trustee shall distribute to my spouse and my descendants from the income and principal of this Trust such amounts as are necessary when added to the funds reasonably available to my spouse and my descendants from all other sources known to my Trustee, to provide for their health, support, maintenance and education, taking into consideration the age, education and station in life of each such distributee.

(a) I particularly desire that each of my descendants be afforded every opportunity to obtain as complete an education, including attendance at graduate and professional schools, as he or she may reasonably desire and be qualified to obtain.

(b) My spouse shall have an absolute veto over any distributions of income or principal to my descendants by prior written notice to the Trustee.

6.4 Termination. The Trust created by this Paragraph shall terminate when my spouse dies. Upon termination, the then remaining Trust property shall be distributed to my then living descendants per stirpes. Distribution may be subject, however, to Trusts, as further described by

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other provisions of this Will. If no descendants of mine are then living, distribution shall be made to my heirs at law, as if I had died at such time without spouse or descendant surviving.

**PREVIEW**

## 7. TRUSTEE'S AND EXECUTOR'S POWERS

7.1 Any Trustee or Independent Executor (hereafter referred to as fiduciary) serving hereunder shall be free from control by any court and shall be under all the duties and shall have all of the powers provided for Trustees pursuant to the Texas Trust Code, as it now reads or as it may hereafter be amended; provided that if the Texas Trust Code conflicts with the express provisions of this agreement then, the provisions herein shall control.

7.2 The Trustee shall determine what is income and what is principal of each Trust created under this Trust agreement, and what expenses, costs, taxes, and charges of any kind whatsoever shall be charged against income and what shall be charged against principal in accordance with the applicable statutes of Texas, as they now exist and may from time to time be enacted, amended, or repealed.

7.3 No fiduciary appointed under this Trust agreement shall at any time be held liable for any action of default of itself or its agent or any other person in connection with administration of the Trust or estate, unless caused by its own gross negligence or by willful commission by it of an act in breach of trust. In making any distribution and in taking any action whatsoever hereunder, the Trustee may rely and shall be fully protected in relying upon any notice, certificate, affidavit or any other paper document believed by the Trustee to be genuine, or upon any evidence deemed by the Trustee to be sufficient. The Trustee shall be protected and held harmless in making any payments made in good faith and without actual notice or knowledge of any changed condition or status of any person receiving payments upon a condition and it shall not be held responsible or accountable for the use and application of any payment or distribution made in good faith.

7.4 In addition to the powers granted to my Trustee and Executor as stated under the Texas Trust Code, I specifically authorize my Trustee and Executor to perform the following powers and duties:

(a) Investments: To invest and reinvest in every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common.

(b) Management of Securities: To exercise, respecting securities held in the Trust estate, all of the rights, powers, and privileges of an owner, including, but not limited to, the power to vote, give proxies, and to pay assessments and other sums deemed by the fiduciary necessary for the protection of the Trust estate; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the fiduciary may deem advisable; to exercise or sell stock subscription or conversion rights; to accept and retain as an investment any securities or other property received through the exercise of any of the foregoing powers, regardless of any limitations elsewhere in this instrument relative to investments by the fiduciary.

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(c) Form of Ownership of Trust Property: To hold securities or other Trust property in the name of the Trust as fiduciary under this Trust agreement.

(d) Business Interests: To continue to operate, sell or liquidate, as the fiduciary deems advisable at the risk of the Trust estate, any business or partnership interests received by the Trust estate.

(e) Sell and Exchange: To sell for cash or on deferred payments, and on such terms and conditions as are deemed appropriate by the fiduciary, whether at public or private sale, to exchange and to convey any property of the Trust estate.

(f) Lease: To lease any real or personal property of the Trust estate for any purpose for terms within or extending beyond the duration of the Trust.

(g) Property Management: To manage, control, improve and repair real and personal property belonging to the Trust estate.

(h) Development of Property: To partition, divide, subdivide, assign, develop and improve any Trust property; to make or obtain the vacation of plats and adjust boundaries or to adjust differences in valuation on exchange or partition by giving or receiving consideration; and to dedicate land or easements to public use with or without consideration.

(i) Repair, Alter, Demolish and Erect: To make ordinary and extraordinary repairs and alterations in buildings or other Trust property, to demolish any improvements, to raise party walls or buildings, and to erect new party walls or buildings as the fiduciary deems advisable.

(j) Borrowing and Encumbering: To borrow money for any Trust purpose from any person, firm or corporation on the terms and conditions deemed appropriate by the fiduciary and to obligate the Trust estate for repayment; to encumber the Trust estate or any of its property by mortgage, deed of trust, pledge or otherwise, using whatever procedures to consummate the transaction deemed advisable by the fiduciary; to replace, renew, and extend any encumbrance and to pay loans or other obligations of the Trust estate deemed advisable by the fiduciary.

(k) Natural Resources: To enter into oil, gas, liquid or gaseous hydrocarbon, sulfur, metal and any and all other natural resource leases on terms deemed advisable by the fiduciary, and to enter into any pooling, unitization, repressurization, community and other types of agreements relating to the exploration, development, operation and conservation of properties containing minerals or other natural resources; to drill, mine, and otherwise operate for the development of oil, gas and other minerals; to contract for the development of oil, gas and other minerals; to contract for the installation and operation of absorption and repressuring plants; and to install and maintain pipelines.

(l) Insurance: To procure and carry at the expense of the Trust estate insurance of the kinds, forms and amounts deemed advisable by the fiduciary to protect the Trust estate and the fiduciary against any hazard.

# PREVIEW

(m) Enforcement of Hypothecation: To enforce any deed of trust, mortgage, or pledge held by the Trust estate and to purchase at any sale thereunder any property subject to any such hypothecation.

(n) Extending Time of Payment of Obligations: To extend the time of payment of any note or other obligation held in the Trust estate, including accrued or future interests, in the discretion of the fiduciary.

(o) Adjustment of Claim: To compromise, submit to arbitration, release with or without consideration, or otherwise adjust claims in favor of or against the Trust estate.

(p) Litigation: To commence or defend at the expense of the Trust estate any litigation affecting the Trust or any property of the Trust estate deemed advisable by the fiduciary.

(q) Administration Expenses: To pay all assessments, taxes and all other expenses incurred in the collection, care, administration and protection of the Trust estate.

(r) Employment of Attorneys, Advisors and Other Agents: To employ any attorney, investment adviser, accountant, broker, tax specialist, or any other agent deemed necessary in the discretion of the fiduciary; and to pay from the Trust estate reasonable compensation for all services performed by any of them.

(s) Minor's Property: To store personal effects given to a person who is a minor (or a person whom my Executor deems incapacitated) for later distribution to such person, or to sell such property and add the proceeds of sale to a trust of which such person is a beneficiary.

(t) Termination by Trustee of Small Trust: To terminate, in the discretion of the Trustee, any Trust which is held for the beneficiary if the fair market value of the Trust, at any time becomes less than \$10,000 and, regardless of the age of the income beneficiary, the Trustee may then distribute the principal and any accrued or undistributed net income to the beneficiary, or to his or her guardian, conservator or other fiduciary.

(u) Partitions: My Trustee and/or Executor shall have the power to make all partitions and divisions contemplated by this will. The actual partitions and divisions made by my fiduciary shall be binding and conclusive upon all interested parties. Any partitions, divisions or distributions may be made by allocating assets and property proportionately in kind or by allocating undivided interests therein in kind.

(v) Distributions and Applications: All distributions and all uses and applications of Trust funds, either income or principal, may be made directly to, or expended for the benefit of, the persons entitled to those funds without the intervention of any legal guardian or other legal representative. My fiduciary may pay any income or principal distribution to, or for the benefit of, a beneficiary, including, but not limited to, the following methods:

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Directly to such beneficiary;



(ii) To the legal or natural guardian of person having custody of such beneficiary; or

(iii) Directly for the maintenance or support of such beneficiary;

(iv) To a person or financial institution serving as custodian for such minor beneficiary under the Uniform Gifts to Minors Act of Texas, or any other state; or

(v) By reimbursing the person who is actually taking care of such beneficiary (even though such person is not the legal guardian) for expenditures made by such person for the benefit of the beneficiary; and the written receipts of the persons receiving such distributions shall be full and complete acquittances to my Executor or Trustee.

(w) **Liability of Third Party:** No purchaser at any sale made by my fiduciary, or persons dealing with my fiduciary hereunder, shall be obliged to see to the application of any money or property paid or delivered to my fiduciary. No person dealing with my fiduciary other than the beneficiaries shall be obliged to inquire into the expediency or propriety of any transaction or the authority of my fiduciary to enter into and consummate the transaction upon such terms as they may deem advisable.

(x) **Records:** My fiduciary shall keep complete and accurate books of account of the estate, Trust, the Trust property and all transactions pertaining thereto. Such records shall be available for inspection at all times during business hours by any beneficiary, or by any person or persons designated by any one of them.

(i) My fiduciary shall make annual statements showing the itemized receipts and disbursements of the income and principal of each Trust, and otherwise reflect the condition thereof, and shall furnish copies of such statements to the beneficiaries of the Trust.

(ii) When there is a corporate Trustee, it shall have custody of all assets, books and records of the Trust.

The above listing of powers is not intended to limit my fiduciary's powers solely to the powers that were expressly named or granted above. The powers are in addition to the powers that are granted under the Texas Trust Code.

7.5 No fiduciary need post any bond for security.

7.6 No fiduciary shall be required to qualify before, be appointed by, or in the absence of breach of Trust, account to any court or obtain the order or approval of any court in the exercise of any power or discretion granted in this will or at law.

7.7 The Trustee or any successor Trustee may at any time resign upon giving to the adult Trust beneficiaries the receipt or receipts to receive income from the trust, or if there be no one to the

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parents or legal guardians of each minor beneficiary then receiving or entitled to receive income from the Trust, thirty (30) days' written notice of such resignation.

**PREVIEW**

(a) In the event any Trustee serving under this instrument shall resign, be removed, cease or fail for any reason to serve as Trustee, such Trustee shall be succeeded by such individual and/or bank or Trust corporation as shall be designated by a majority of the adult Trust beneficiaries then receiving or entitled to receive income from the Trust, or if there be none, by a majority of the parents or legal guardians of the minor beneficiaries then receiving or entitled to receive income from the Trust.

(b) If a successor Trustee is not appointed as provided above, then, upon application by the Trustee to a court of competent jurisdiction, a successor Trustee which meets the qualifications described above shall, at the expense of the Trust estate, be named by such court.

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7.8 No beneficiary of any Trust created under this will shall have the right or power to anticipate, by assignment or otherwise, any income or principal given to such beneficiary by this will, nor in advance of actually receiving the same have the right or power to sell, transfer, encumber or in any way charge same; nor shall such income or principal, or any portion of the same, be subject to any execution, garnishment, attachment, insolvency, bankruptcy, or other legal proceeding of any character, or legal sequestration, levy of sale, or in any event or manner by applicable or subject voluntarily or involuntarily, to the payment of such beneficiary's debts, including claims for alimony or support.

**7. FIDUCIARY APPOINTMENTS**

**THIS DOCUMENT**

8.1 I direct that no action shall be had by my executor in the county or probate court in relation to the settlement of my estate, other than the probating and recording of this will, and the return of a statutory Inventory, Appraisalment and List of Claims of my estate.

8.2 I appoint my spouse to serve as [:Independent Executor/Independent Executrix].

8.3 If my spouse does not qualify, or having qualified, dies, resigns, becomes incapacitated or otherwise ceases to act, then I appoint [Alternate Independent Executor or Executrix's name] to act in my spouse's place as Independent [Alternate Executor's Gender: Executor/Executrix] of my will.

If [Alternate Independent Executor or Executrix's name] is unable to act, then I appoint [Second Alternate Independent Executor or Executrix] to act as Independent [Second Alternate Executor's Gender: Executor/Executrix].

**THANK YOU**

[If the Testator or Testatrix has any children, include the guardian provisions and insert the following paragraphs, if not continue with the general and administrative provisions and

renumber the following paragraphs.

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GUARDIAN  
**PREVIEW**

8.4 In the event that any child or children of mine, natural or adopted, is incapacitated, or has not reached the age of eighteen (18) years at the date of my death, or is need of a guardian, past the age of eighteen (18) years, then I appoint my spouse, [Client's spouse], to act as Guardian of the person and the estate of said child or children

8.5 If my spouse does not survive me, or if my spouse fails to qualify, or having qualified, dies, resigns, or becomes incapacitated, and in the event that any child or children of mine, natural or adopted, is incapacitated, or has not reached the age of eighteen (18) years at the date of my death, or is need of a guardian, past the age of eighteen (18) years, then I appoint [First Alternate Guardian's Name], to act as Guardian of the person and the estate of said child or children.

8.6 If my spouse and [First Alternate Guardian's Name], do not survive me, or fail to qualify, or having qualified, dies, resigns, or becomes incapacitated, and in the event that any child or children of mine, natural or adopted, is incapacitated, or has not reached the age of eighteen (18) years at the date of my death, or is need of a guardian, past the age of eighteen (18) years, then I appoint [Second Alternate Guardian's Name], to act as Guardian of the person and the estate of said child or children.

**TRUSTEE**

8.7 I appoint [Trustee's name] to serve as trustee of the trust(s) created herein. If [Trustee's name] cannot or will not serve as trustee, then I appoint [Alternate Trustee's name] to serve as the trustee of the trust(s) created herein.

**THIS DOCUMENT  
BONDS, EXPENSES AND OTHER REQUIREMENTS**

8.8 I direct that none of the fiduciaries appointed by me, including but not limited to my Independent Executors, Independent Executrices, guardians or trustees, shall be required to furnish any bond or other security for the faithful performance of their duties. For fiduciaries appointed by the court, I direct that they shall be required to post a bond, unless all of the beneficiaries waive such requirement in writing.

8.9 No individual Executor, Executrix, guardian or trustee shall receive any compensation for serving under this will other than person who are not related to me or the beneficiaries stated herein, and who are serving in a professional capacity.

8.10 All corporate or professional fiduciaries such as banks, attorneys, certified public accountants, etc. shall receive fair and reasonable compensation for services rendered in any amount not exceeding the customary and prevailing charges for services of a similar character at the time and at the place such services are performed.

8.11 All of my fiduciaries, shall be reimbursed for the reasonable costs and expenses incurred in connection with their duties hereunder.

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9. ADMINISTRATIVE PROVISIONS

PREVIEW

9.1 For the purposes of this will, no person shall be deemed to have survived me if such person shall die within ninety (90) days after my death.

9.2 If any share of my estate or, upon termination of a Trust, any share of the Trust property is to be distributed to a person who has not attained the age of thirty (30) years or who, in the absolute uncontrolled judgment of my Executor or Trustee, is incapacitated by reason of legal incapacity or physical or mental illness, or infirmity (such person is referred to as the "ward"), I direct my Executor or Trustee, as the case may be, to either:

(a) Hold such share in custody as custodian (in the event co-fiduciaries are then serving hereunder, then the co-fiduciaries shall decide who shall serve as custodian) for a minor ward under the Uniform Gift to Minors Act of Texas or any other state.

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(b) Hold such share in a separate Trust for the benefit of a minor or other ward, it being my intention by the foregoing provisions to insure maximum flexibility in the administration of any such property, taking into consideration what is in the best interest of the ward.

(c) My Executor or Trustee shall not be liable for any decision made in good faith as to whether such property should be held in custodianship or held in Trust for the benefit of any such ward.

(d) With respect to any property held in Trust pursuant to this section, when any ward under the age of twenty-one (21) years attains such age, or when any such other ward, in the absolute and uncontrolled judgment of my Trustee, becomes legally, mentally and physically capable of receiving such share, all remaining income and principal of Trust shall be distributed to the ward and the Trust shall terminate.

THIS DOCUMENT

(e) Prior to the termination of the Trust, my Trustee shall utilize such amounts of Trust income and principal as my Trustee, in my Trustee's absolute and uncontrolled discretion, deems desirable from time to time to provide for the comfort, health, support, maintenance or education of the ward, directly and without the interposition of any guardian; provided, however, that my Trustee may distribute to the ward of the Trust all or any part of the income of the Trust as my Trustee deems desirable, without reference to any standard and without regard to other available funds.

(f) If the ward dies before the termination of the Trust, the principal and all accumulated income of the trust shall be distributed to the ward's Executor or administrator for administration and distribution as a part of the ward's estate.

THANK YOU

9.3 My Executor may begin distribution of income or principal from my estate immediately upon my death in accordance with the provisions of any Trust provided for by this will, whether or not any such Trust has actually come into existence or received any distribution from my estate.

9.4 My Executor, without incurring any liability, may also expend moneys from my estate within thirty (30) days of my death to the extent necessary to provide for the support of my spouse.

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**PREVIEW**

(a) My Trustee may also retain making distributions from any Trust provided for by this will immediately upon receipt of any property as Trustee of such Trust, whether or not the administration of my estate is then complete.

(b) With regard to any Trust created by this will, at the end of such Trust's accounting year, any undistributed income shall be added to and become a part of the Trust principal; provided, however, that any distributions from any Trust created by this will made pursuant to the Internal Revenue Code shall be deemed to have been made on the last day of such Trust's preceding accounting year.

9.5 My Executor may elect to consent, for gift tax purposes, to have gifts made by either my spouse or me to third parties considered as having been made one-half by each of us, and my Executor may elect to join in my joint income tax return with my spouse or my spouse's estate.

9.6 Life insurance proceeds payable to my Trustee which are includable in my gross estate for federal estate tax purposes shall not be liable for or used for the payment of (but may be loaned for the purpose of paying) any taxes, liabilities, debts, or any other claims or charges against my estate; provided, however, that such proceeds and payments may be used for the payment of federal estate and state inheritance taxes assessed with respect to such payments or proceeds.

9.7 My spouse may direct my Executor or Trustee to retain or to sell our homestead or any replacement home, and my spouse may also direct my Executor or Trustee to invest an amount not to exceed the proceeds of sale of the homestead (or any replacement home) in a replacement home.

(a) For purposes of this section, proceeds of sale shall mean the gross sales price less all closing costs and other expenses of sale.

(b) My spouse shall have the exclusive use of such homestead and any replacement home, without any obligation to pay rent.

(c) While using such property, my spouse shall be obligated to pay all property taxes and assessments on such homestead (or any replacement home), maintain the property in a good state of repair, maintain adequate fire, extended coverage and casualty insurance on such property, pay for any capital improvements which my spouse desires to make to such property and pay all sums (both principal and interest) which come due pursuant to the terms of any mortgage or other encumbrance secured by such property.

(d) Unless prohibited by the Texas Probate Code, my spouse may acquire such homestead (or replacement home) by the partition of our community estate or at any time by purchase from my Executor or Trustee.

9.8 Any payments from an employee or self-employed benefit plan and all life insurance proceeds from life insurance policies on my life payable to my Trustee shall, if my spouse survives me, be allocated to the Trust or, if my spouse fails to survive me, be distributed in the same manner as the residue of my estate. The Trust created herein shall come into existence if any such payments

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**THIS DOCUMENT**

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or proceeds are allocated to it pursuant to this section, even if it would not otherwise come into existence. The Trustee shall distribute my spouse's community property interest in such proceeds (if any) to my spouse, outright and free of Trust.

9.9 All estate, inheritance or similar taxes arising in connection with my death with respect to all property included in my gross estate for the purpose of calculating such taxes whether or not such property passes under my will, shall be paid out of the residue of my estate without apportionment.

(a) This section shall not apply to any generation-skipping taxes as defined in the Internal Revenue Code.

(b) All transfer taxes arising in connection with any generation skipping transfers hereunder shall be paid as provided in the Internal Revenue Code. Accordingly, any transfer taxes arising in connection with a taxable distribution shall be paid by the distributee, and any transfer taxes arising in connection with a taxable termination shall be paid from the corpus of the applicable Trust. Whenever used in this will, the words "generation- skipping transfer," "taxable distribution" and "taxable termination" shall have the same meanings as these words have pursuant to the Internal Revenue Code.

## 10. GENERAL PROVISIONS

10.1 My spouse and I may at approximately the same time execute similar wills in which each of us is the recipient of the other's bounty to a greater or lesser extent; however, these wills are not the result of any contract or agreement between us and either will may be revoked or amended at any time at the sole discretion of the maker of that will.

10.2 Any person shall have the right, from time to time, to grant, transfer, or convey, either by inter vivos transfer or by will, to my Trustee such additional property as such person shall desire to become a part of the Trusts created and, subject to acceptance by my Trustee, such additional property shall be allocated to the Trusts on the basis specified in the instruments by which property is transferred, and shall thereafter be held, administered and distributed by my Trustee in accordance with the provisions of this will.

10.3 If any devisee, legatee or other beneficiary ("such person" below in this Paragraph) under this will, directly or indirectly, in any proceeding before any judicial body, contests or disputes the probate of this will, or maintains that this is not my will, or attempts to prevent any provision in this will from being carried out in accordance with its terms and my manifest intent (regardless of whether or not any such proceeding or action is taken in good faith and with probable cause), then in any of these events, I absolutely revoke any benefit under this will for such person, declare the same void and of no force and effect, and direct that the benefits otherwise conferred upon such person shall pass in the manner provided in this will as if such person had predeceased me.

(a) Each benefit conferred in this will is made on the condition precedent that the beneficiary thereof shall accept and agree to all of the provisions of this will, and the provisions of this Paragraph is one essential part of each and every benefit.

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(b) The provisions of this Paragraph shall not apply in the case of any proceeding brought by any such person the sole purpose of which is to clarify or have construed any ambiguity found in this will or to seek instructions regarding any such ambiguity.

10.4 References in this will to "descendant," "descendants," "children" or "issue" mean lawful blood descendants of the first, second or any other degree of the ancestor designated; provided, however, that such references shall include, with respect to any provision of this will, descendants who have been conceived at any specific point in time relevant to such provision and who thereafter survive birth; and provided further that an adopted child and such adopted child's lawful lineal descendants by blood or adoption shall be considered under my will as lawful lineal blood descendants of the adopting parent or parents and of anyone who is by blood or adoption a lineal ancestor of the adopting parent or of either of the adopting parents, provided such adoption occurs prior to such adopted child's eighteenth birthday.

10.5 References in this will to my "heirs at law" are those persons who take upon intestacy under the statutes of descent and distribution of Texas. A provision for property to pass to the descendants of a designated person, per stirpes, shall mean that the property shall pass to such person's children then living in equal shares or all to such person's child if only one is then living; provided that if any child of such person is not then living but has descendants then living the property which would have passed to such deceased child if he or she were then living shall pass instead to his or her descendants then living, per stirpes, provided further that in determining the class comprising such descendants, no descendant of a living person included in such class shall be included therein.

10.6 Where context and circumstances require, the gender of all words used in this will including but not limited to executor, shall include the masculine, feminine and neuter, and the singular of all words shall include the plural and the plural the singular.

10.7 This Trust Agreement and/or Last Will and Testament has been executed in Texas, and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of Texas. If any part, clause, provision, or condition of this Trust Agreement and/or Last Will and Testament is held to be void, invalid or inoperative, such voidness, invalidity or inoperability shall not affect any other clause, provision, or condition hereof; but the remainder of this Trust Agreement and/or Last Will and Testament shall be effective as though such clause, provision or condition had not been contained herein.

10.8 My Executor may seek and obtain court instructions for the purpose of carrying out as nearly as may be possible the intention of this Trust Agreement and/or Last Will and Testament as shown by the terms hereof, including the term being invalid, illegal or inoperative. References in this will to various sections of the "Internal Revenue Code" are to such designated sections of the Internal Revenue Code, as amended, or any corresponding statute hereafter in effect.

10.9 To the same extent as if it were the original, anyone may rely on a copy of this Trust Agreement and/or Last Will and Testament certified by a notary public to be a true copy of this Trust Agreement and/or Last Will and Testament. Anyone may rely on any statement of fact certified by a notary public appearing on the original Trust Agreement and/or Last Will and Testament or a certified copy thereof to be a Trustee hereunder.

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10.10 I do not intend by this Last Will and Testament to exercise any power of appointment that I may possess at the time of my death.

10.11 Personal Belongings and Household Effects. The term "personal belongings and household effects" means all personal automobiles, household goods, furniture, furnishings, garden equipment, china, jewelry, silver, coin and stamp collections, works of art, clothing, personal effects, and any other similar items, and includes any insurance on any of these items. The determination of which items fall within these categories shall be in the sole judgment of the Executor, whose decision shall be binding on all parties. I may express my desires as to the division of some of these items in a letter to my Executor. It is my expectation that these desires will be carried out, and the Executor shall be fully protected in relying upon any such letter. If the beneficiaries cannot agree on the division, the Executor shall have sole discretion to divide all of these items among the beneficiaries, taking into account my desires and the desires of the beneficiaries. In making up the respective shares, the Executor may equalize any inequality in monetary value (as determined by the Executor) by a distribution of cash. All expenses of packing, shipping, insuring and delivering any of these items to a beneficiary shall be paid by the Executor as an administration expense of my estate.

10.12 Marital Deduction Gift. The Executor may satisfy the marital deduction gift by making distributions of cash or in kind, or by making distributions partly of cash and partly in kind. In making distributions in kind, the Executor shall value assets at their date of distribution value. In no event shall the gift be satisfied with property or the proceeds of property with respect to which the federal estate tax marital deduction would not be allowable if the property or the proceeds thereof were so used, and the amount of the marital deduction gift shall be reduced to the extent that it cannot be satisfied with property that qualifies for the deduction. The right to any income in respect of a decedent under the Internal Revenue Code shall be allocated first as a matter of right to the marital deduction gift to the extent that the allocation produces a federal estate tax marital deduction and does not exceed the amount of the marital deduction gift.

10.13 Marital Deduction Amount. The "marital deduction needed to minimize any federal estate tax in my estate" means an amount (if any) equal in value to: (i) the unlimited federal estate tax marital deduction allowable to my estate minus (ii) the value for federal estate tax purposes of all items in my gross estate which qualify for the deduction and which pass or have passed from me to my spouse in a form qualifying for the deduction otherwise than under the formula marital deduction gift. In making the computations necessary to determine the amount of this pecuniary gift, values as finally determined for federal estate tax purposes shall be used. This gift shall be reduced by the amount, if any, needed to increase my taxable estate to the largest amount that will result in no federal estate tax being payable by my estate, after allowing for the unified credit against the federal estate tax but no other credit. The definition of "federal estate tax" shall not include any excise taxes on excess distributions on qualified plans under The Internal Revenue Code or any amendments thereto.

10.14 Perpetuities Clause. Notwithstanding any other provision of this Will, if any Trust herein created or herein authorized (by power of appointment or otherwise) has not otherwise fully and absolutely terminated under the terms of this Will, then such Trust nevertheless shall terminate fully and absolutely and all principal and accumulated and undistributed income shall be distributed to



the respective income beneficiary or beneficiaries at the end of twenty (20) years and eleven (11) months after the death of the last to die of my spouse and my descendants who are living at my death.

**PREVIEW**

10.15 Uneconomical Trust. Irrespective of other provisions of this will, the Trustee may at any time terminate any Trust hereunder or any share of the trust, if, in his or her sole judgment, the continued management of such Trust or any share of the trust is no longer economical because of the small size of such Trust or share and if such action shall be deemed to be for the best interests of the beneficiary or beneficiaries. In case of such termination, the Trustee shall distribute forthwith the share of the Trust estate so terminated to the income beneficiary or beneficiaries, per stirpes. Upon such distribution and delivery, the Trust or share shall terminate and the Trustee shall not be liable or responsible to any person or persons whomsoever for its action. The Trustee shall not be liable for failing or refusing at any time to terminate any Trust or a share of the trust as authorized by this paragraph.

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10.16 Distribution Power. In making distribution of property, my Executor or Trustee is specifically authorized to make distribution wholly or partly in kind at current values in the manner deemed advisable by my Executor or Trustee, including but not limited to allotting and transferring specific securities, specific personal property, specific real property, undivided interests in any asset, or any combination thereof, to comprise any one or more shares of the persons taking under this Will.

#### SIGNATURE CLAUSE

I, [Client's name], have placed my initials on each of the preceding pages of this my Last Will and Testament.

**THIS DOCUMENT**

I make, declare, publish and execute this Last Will and Testament which consists of [number] typewritten pages, including the signature pages and the attached self-proving affidavit, all of which constitutes my Last Will and Testament.

I have subscribed my name in the presence of [Witness name], and [Witness name], who have, at my request and in my presence and in the presence of each other, also subscribed their names hereto as attesting witnesses.

The above actions have occurred on \_\_\_\_\_ at [City, County and State].

**THANK YOU**

[Client's name]

#### ATTESTATION CLAUSE

This Last Will and Testament, each preceding page of which is identified by [Client's name]'s initials, was subscribed, published and declared by [him or her] to be [his or her] Last Will and Testament.

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This declaration and signature was done in our presence and in [his or her] presence, at [his or her] request, and in the presence of each other.

# PREVIEW

We subscribe our names as witnesses, and we declare that at the time the [Client's name] signed this Last Will and Testament, that [he or she] was of sound mind and memory.

We also declare that the [Testator or Testatrix] executed this Last Will and Testament freely of [his or her] own free will and was under no constraint, coercion, duress or other influence.

\_\_\_\_\_,  
[Client's name]  
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\_\_\_\_\_,  
Witness Name

\_\_\_\_\_,  
Witness Address and Telephone Number

\_\_\_\_\_,  
Witness Name  
**THIS DOCUMENT**

\_\_\_\_\_,  
Witness Address and Telephone Number

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State of Texas  
County of \_\_\_\_\_

# PREVIEW

Before me the undersigned authority, on this day personally appeared [Client's name],  
\_\_\_\_\_ and \_\_\_\_\_ known to me to be [Testator or Testatrix],  
and the witnesses, whose names are subscribed to the annexed or foregoing instrument in their  
respective capacities.

All of the above persons were duly sworn by me. The [Testator or Testatrix] declared to me and to  
the witnesses in my presence and in their presence, that this document is [his or her] Last Will and  
Testament.

[He or she] also declared in my presence that [he or she] had willingly made and executed this  
document as [his or her] free act and deed for the purposes therein expressed.

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The witnesses, each upon his or her oath, stated to me, in the presence and hearing of the [Testator  
or Testatrix], that [Client's name] had declared to them that this instrument is [his or her] Last Will  
and Testament and that [he or she] executed it as such and wanted each of them to sign this  
document as a witness.

Each witness stated upon their oaths that they signed this document as a witness in the presence of  
the [Testator or Testatrix]. Each witness also stated upon their oaths that they signed the document  
at [Testator or Testatrix]'s request.

Each witness stated upon their oaths that [Client's name] 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).

**THIS DOCUMENT**

Each witness further stated upon their oaths that [Client's name] was at that time of sound mind and  
that each of the witnesses was then at least fourteen (14) years of age.

\_\_\_\_\_

[Client's name]

**THANK YOU**

Witness Name

\_\_\_\_\_

Witness Name

State of Texas  
County of \_\_\_\_\_

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Subscribed and sworn to before me **PREVIEW** \_\_\_\_\_, [Testator or Testatrix,  
and by the

witnesses \_\_\_\_\_ and \_\_\_\_\_, on  
\_\_\_\_\_.

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

\_\_\_\_\_  
Notary's typed or printed name

**PLEASE DO NOT COPY** My commission expires:

[or Notary's Stamp]

**THIS DOCUMENT**

**THANK YOU**

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