

## Purpose Of A Will And Legal Requirements For A Valid Will

**PREVIEW**

1. A person's property will be distributed at his death, either pursuant to the terms of a valid will which is probated or pursuant to the laws of intestate succession (intestacy).

2. The purpose of a will is, therefore, to state the desires of the testator in passing his property at his death. The will may be simple and contain gifts of all of his property to one or more beneficiaries or the will may contain a series of complicated trust documents.

3. Requirements for a valid will:

a. A will may be formal or holographic.

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A holographic or handwritten will is valid if the document is completely in the testator's handwriting and is signed. The document must also indicate testamentary intent and the testator must have testamentary capacity.

ii. A formal will is valid if the will is signed by the testator and witnessed by 2 or more witnesses. The witnesses must sign in the testator's presence.

b. See the following provisions of the Texas Probate Code for statutory authority applicable to wills:

§37 Passage of title upon intestacy and under a will;

§37A Means of evidencing disclaimer or renunciation of property or interest under a will;

§40 Inheritance by and from an adopted child;

§41 Matters affecting and not affecting the right to inherit;

§42 Inheritance rights of illegitimate children;

§43 Determination of per capita and per stirpes distribution;

§44 Advancement brought into hotch-potch;

§45 Community estate;

§46 Joint tenancy is abolished;

§47 Requirement of survival by 120 hours;

§57 Who may execute a will;

§58 Interest which may pass under a will;

§58A Devises and bequests to trustees;

§59 Requisites of a will;

§59A Contracts concerning succession;

§60 Exceptions pertaining to holographic wills;

§61 Bequests to witness;

§62 Corroboration of testimony of interested witness;

§63 Revocation of wills;

§64 Capacity to make a nuncupative will;

§65 Requisites of a nuncupative will;

§67 A-1-born or after-adopted children;

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§68 Prior death of legatee;  
§69 Nullity of will arising from duress;  
§70 Provision in will for management of separate property;  
§71 Deposits of will with court during testator's lifetime.

# PREVIEW

4. Disciplinary Rule 1.08(b) states that an attorney should not prepare an instrument, i.e. a will, which gives the attorney (or the attorney's parents, child, sibling or spouse) a substantial gift, except where the client is related to the attorney. Lawyers can be beneficiaries of wills written for the spouse of the Testator or any ascendant or descendant of the Testator. The lawyer may also be related within the third degree of sanguinity rather than the previously allowed law that limited the gift to the second degree of sanguinity.

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Conflict of interest verification form

# PREVIEW

## CONFLICT OF INTEREST VERIFICATION FORM

[Date]

[Staff attorney's name]

Potential Client: [Client's name]

Names submitted for verification:

[Names to check for a conflict of interest]

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Date of Verification: [Date of the Conflict of interest was Verified]

Name	No Conflict of Interest
[Staff Attorney's Name]	

NOTES

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# PREVIEW

New client and will information form for opening a new matter

## CLIENT INFORMATION FORM

**ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION**

Date \_\_\_\_\_

Attorney \_\_\_\_\_

File No. \_\_\_\_\_

Client's Name \_\_\_\_\_

Residence Address \_\_\_\_\_

County's Name \_\_\_\_\_

Residence Phone \_\_\_\_\_

Business Phone \_\_\_\_\_

Facsimile Number \_\_\_\_\_

Person We Can Contact If We Cannot Reach You:

Name \_\_\_\_\_

Address \_\_\_\_\_

Residence Phone \_\_\_\_\_

Business Phone \_\_\_\_\_

Relationship \_\_\_\_\_

New Client \_\_\_\_\_

Or New Matter Current/Former Client \_\_\_\_\_

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Address

**PREVIEW**

Other Names Which Client Is Or Has Been Known By

Referred By

Previous Client

Acquaintance

Advertising

Referral Service

Age

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Date Of Birth

Place Of Birth

Marital Status

Spouse's Name

Social Security No.

**THIS DOCUMENT**

Driver's License No.

Employment History For Past 5 Years

Military Status

Client's Yearly Income

Other Sources Of Income

Person Responsible For Bill, If Other Than Client

**THANK YOU**

Fee Arrangement

Estimated Fee \$

Hourly Rate \$

Return of Receipt \$  
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Notes

Accepted Or Rejected:

Date:

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Will preparation information form

# PREVIEW

## WILL INFORMATION FORM

Have Client Complete Letter Of Instructions.

Date:

Client's name:

Identity Of Client's Family:

Client's Name: **PLEASE DO NOT COPY**

Spouse's Name:

Address:

Phone No.:

Age:

Birth Date:

Social Security No.:

**THIS DOCUMENT**

Previous Spouses-Deceased And Divorced:

Name:

Address:

Phone No.:

Age:

Birth Date:

**THANK YOU**

Social Security No.:

Date

Court Name

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Location

Cause Number Of Divorce Deceased

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Children And Stepchildren:

Name:

Address:

Birth Date:

Identity Of Deceased Children:

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Address:

Birth Date:

Disposition Of Property:

Specific Bequests (List):

Property To Spouse (List):

Property To Go To Children If Spouse Is Deceased

# THIS DOCUMENT

Per Stirpes: Or

Per Capita:

Other Beneficiaries:

Name:

Address:

Independent Executor/Executrix

# THANK YOU

1st Choice:

Name:

Address:

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Phone No.:



2nd Choice:

**PREVIEW**

Name:

Address:

Phone No.:

3rd Choice:

Name:

Address:

Phone No.:

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Guardian:

1st Choice:

Name:

Address:

Phone No.:

2nd Choice:

Name:

Address:

Phone No.:

3rd Choice:

Name:

Address:

Phone No.:

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**THANK YOU**

Date Will Executed:

Place Of Execution:

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Location Of Original Will:

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Date Client Given Letters Of Instruction

Name Of Notary:

Date Notary's Commission Expires:

Other:

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# PREVIEW

Letter explaining wills, trusts, probate and the consequences of dying without a will in Texas.

**ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION**

**WHAT YOU SHOULD KNOW ABOUT WILLS, TRUSTS & PROBATE AND THE CONSEQUENCES OF DYING IN TEXAS WITHOUT A WILL**

Dear [Salutation]:

[The following discussion should answer some questions you may have regarding wills and probate procedure in Texas.]

# PLEASE DO NOT COPY

or

Since you expressed some interest in revising your will, I have taken the liberty to send you this free information letter that should answer some questions that you may have regarding wills and probate in Texas.]

The State bar of Texas and the American Bar Association, as well as most state bars, recommend that every adult person have a will.

## WHAT IS A WILL? THIS DOCUMENT

A Will is a legal document that allows you to direct the distribution of your property upon death in an economical and efficient manner. Gifts under a Will may pass either directly or in trust to a beneficiary.

A will is a legal document that is signed in accordance with state laws that pertain to testamentary transfers. Testamentary transfers pass title of your property pursuant to the terms of the Will to your beneficiaries upon your death.

### WHAT IS A TRUST?

A Trust is a legal entity in which legal title and management of the property are vested in a Trustee who administers the property for a designated beneficiary(s).

# THANK YOU

Property may be put into a trust while the donor is alive or the trust may take effect and property transferred to it after a person dies ( a testamentary trust). A trust may be included in a will.

### WHAT IS ESTATE PLANNING?

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Estate Planning is the process of ascertaining the appropriate legal document, i.e. Will or Trust for your estate, and what pertinent provisions to insert in the documents. You may desire to obtain the most favorable tax and other benefits available for your estate.

**PREVIEW**

You may also desire to provide an efficient means to manage and pass your property to your heirs upon your death. In the course of assembling the various requested information, you should decide the way you desire your estate to be distributed.

Naturally, there are many factors that should be considered when arriving at a comprehensive estate plan, such as Federal Estate and Income Tax consequences; these may differ with each situation.

**WHY SHOULD YOU HAVE A WILL OR A TRUST?**

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If you die without a Will, the rules of intestate distribution dictate how your property will be passed. In Texas, your estate will be encumbered with significant additional legal expenses and delays in probate court if you do not have a Will. Many states require the posting of a bond. The cost of a bond can be a significant expense.

There are many tax and non-tax advantages for creating a Trust in your will (Testamentary Trust). For example, a person with a substantial estate may wish to leave a large portion of the estate in trust for his or her beneficiaries to prevent the taxation of such property upon death of the beneficiary. Additionally, if a minor child is a beneficiary of the estate, it is advisable to create a Trust for the benefit of the child.

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**WHAT IS PROBATE?**

Probate is the process of submitting a Will to the Probate Court, administering an estate, and distributing the property.

A will must be probated as a prerequisite to its ability to transfer property to the intended heirs. A will has no legal right to transfer property until the appropriate court has entered a formal order or decree which admits the will to probate. A probate proceeding can be a contested or an uncontested matter.

An individual executor or family member (who is not an attorney) can handle the probate of a non-contested will in some states.

**THANK YOU**

**WHAT IS AN INDEPENDENT EXECUTOR?**

An Independent Executor or Executrix is free to administer your estate with a minimum of court supervision and legal expense. It is a streamlined and simplified probate proceeding.

An Independent Executor or Executrix has the duty to settle your estate and distribute your property as designated in your Will.

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If the maker of the Will is married, the maker, known as a Testator, if a male, or a Testatrix, if a female, often designates his or her spouse as an Independent Executor. However, if the estate is expected to be substantial, or burdensome for the spouse to manage (for example, when a business or a farm will be an asset of the estate), then the Testator or Testatrix may wish to designate a bank or trust company as the Independent Executor, instead of the spouse. The maker could also consider someone to help the spouse as a Co-Independent Executor.

If you decide to provide for a Trust in your Will, you will designate a Trustee who will manage the Trust for your beneficiaries. If you are married, you may wish to designate your spouse as the Sole Trustee or a Co-trustee. You will also designate a Trustee who will manage any Trusts created for the benefit of your children.

An Independent Executor or Trustee (who is not a parent of your children) is not authorized to personally take custody of your minor children. You may, therefore, want to name a Guardian for your minor children who will be in a position to assume responsibility for the care of your children upon the death of the survivor of you and your spouse.

A Guardian may be designated either in your Will or in a separate written instrument. Sometimes a separate instrument is advisable if you have difficulty deciding upon a Guardian.

You should also designate one or more alternative Independent Executors, Trustees and Guardians who will act in the event your first choice predeceases you or is otherwise unable or unwilling to serve.

## OTHER CONSIDERATIONS: **THIS DOCUMENT**

If you move to a different state or country, have your Will reviewed by an attorney licensed in that jurisdiction to determine if the Will is valid in such state or country and whether or not probate of the Will may be complicated by the use of an out-of-state Will.

We advise our clients to place the original Will in a safe place such as a safe deposit box and keep a copy of their Will at home. It is also a good idea to give a copy of the Will to the Executor named in the will.

The Will should be reviewed periodically so that it may be kept current. You should revise your Will whenever your personal circumstances change significantly, such as with a birth, death, remarriage or divorce, or if your assets change substantially.

## **THANK YOU**

Since your Will is a legal document, it cannot be changed unless formal procedures are complied with. Accordingly, please do not attempt to alter, write on your Will or change your Will yourself. You should call your attorney.

**WHAT ARE SOME OF THE CONSEQUENCES OF DYING  
WITHOUT A WILL IN TEXAS?**

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If you die without a will, you are considered to have died intestate. Consequently, your property will be distributed pursuant to the state's probate code provisions relating to intestacy.

**PREVIEW**

Perhaps one of the most important reasons for having a will is to streamline and reduce the probate process and to simplify the winding up one's financial affairs.

Intestacy can create hardships for your family and can significantly increase the cost of closing out your financial affairs. It may cost your heirs significantly more money to have your estate administered if you have not executed a valid will which appoints an Independent Executor to serve without the requirement of posting a bond.

If you had a will and the will provided for the appointment of an Independent Executor to serve without bond, the cost of probating your will and winding up and administering your estate would have been relatively inexpensive compared to what it can cost if the court must appoint an executor to administer the estate.

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The court appointed administrator may have to post a bond and have his or her actions approved by the probate court prior to winding the affairs of your estate.

The Independent Executor can very quickly and inexpensively wind up your affairs, pay your bills, sell unneeded assets, and distribute your property according to the terms of your will. One aspect of this procedure that makes it so quick and cheap, is that the executor does not have to obtain court approval for the above actions. The executor is only required to file the will for probate, attend the probate hearing, take the oath to serve as the executor, obtain letters of testamentary (to act for the estate) and then file an inventory and an appraisal that lists the property owned by the deceased.

**THIS DOCUMENT**

The executor is entitled to pay the debts and distribute the assets of the estate without court supervision. This saves a lot of time and a lot of attorney's fees! This is a very cost efficient way of handling probate since your estate only pays for the attorney's time in getting the will approved by the probate court. Thereafter your estate does not have to pay the attorney to obtain court approval every time the executor wants to pay bills, sell property or distribute the assets to the beneficiaries.

You may lose that right if you die without a will because the probate court may supervise the entire distribution of the estate. The estate can then be eaten up by attorneys fees from court appointed attorneys and receivers as opposed to the moneys being paid directly to your heirs and beneficiaries.

**THANK YOU**

Your estate is subject to many problems that could have been avoided, if you had executed a valid will. Your spouse and children may have to hire an attorney to allow them to obtain money for their support since funds may be subject to court control or held by banks, stock/mutual fund organizations etc. who are reluctant to release the money until they have received court approval for the release.

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Banks commonly freeze accounts until court authorization is obtained to spend funds unless the bank account was set up as joint tenants with a right of survivorship. An account that is designated as right of survivorship passes pursuant to the terms of the account by contract rather than through probate or through your will.

Many bank accounts are set up as tenants in common and therefore the bank may not allow moneys to be expended from the bank accounts until the proper probate procedure has been completed. The bank does not want to be liable for allowing a person to take funds from an account that he or she is not the correct owner of.

If your children are under the age of 18, a guardianship may be required in order to administer the property that the children inherited pursuant to your dying without a will.

For instance, your spouse may not be able to sell the home or personal property which was owned jointly by you and your spouse. This means that the family home, which was owned jointly by the husband and wife (in the event the husband died), could be owned jointly by the surviving spouse and the minor children. Since the children now own part of the home along with the spouse, the property is encumbered by the need for a court supervised guardianship.

If the surviving spouse desires to sell the property, he or she may be required to open an expensive guardianship. He or she must then obtain court approval before the home can be sold. He or she must then post a bond for acting as guardian and place one half of the net proceeds in a bank account for the use and benefit of the children.

If the home had passed to the surviving spouse as a beneficiary under a valid will, then the surviving spouse would not have to undergo this nightmare.

A will should appoint a guardian over your minor children. Frequently in a husband, wife situation with minor children, the husband will designate the wife as guardian in the event he dies and the wife will designate the husband as guardian in the event she dies. If the husband dies without a will, then the wife may still remain guardian of the children. However, she may be required to open a guardianship for and on behalf of the children for any property that the children may own.

The guardian may have to hire an attorney to open the guardianship and pay filing fees. The guardian may have to post a bond to safe guard the assets under the guardianship. The guardian may be required to make reports and obtain court approval prior to taking any action with the property subject to the guardianship. Typically, annual accounts are required in a court supervised guardianship. Those forms must be prepared pursuant to the court's requirements. Frequently they are prepared by an attorney and are subject to close scrutiny.

The guardian must also render an accounting of how, why and when moneys were spent out of the guardianship estate.

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When the children reach the age of majority and are no longer minors, they have a legal right to receive a complete accounting from the guardian of all of the financial actions taken during the term of the guardianship.

When the children reach legal age they then have the full legal right to spend their money as they please. The surviving parent will have no right to question the children's actions how, when and where they spend their money. If however, moneys that were earmarked for the children were placed into a trust pursuant to a valid will, the trustee could control the amount of money spent, how it should be spent, when it should be spent and for what purposes, such as education, health or maintenance.

An unfortunate nightmare related to this incident can be a situation where the children and wife own a piece of property, personal or real, jointly due to the dying without a will. Now that the children have reached the age of majority, if he or she decides to sell his interest in the commonly held property and if there is a disagreement by the other parties whether or not the property should be sold, the child may file a lawsuit in a district court to force a partition, a division, or sale of the property.

The surviving spouse may have desired to keep the property. He or she may be dependent on some of that property of his or her livelihood.

Another horror story that can be caused by dying without a will is if the spouse remarries and thereafter dies without a legal and valid will, the subsequent or second spouse may be entitled to a homestead interest or an interest in some of the deceased's personal property.

Your natural children may need some of that property for their support, the second spouse may not be required to spend any of those moneys on your children's behalf.

If a proper will had been made which included a trust, the first husband could have provided in the trust that all of the property would be used to help, support, educate and provide for the welfare of the surviving spouse for life. Then the trust could have provided that the funds could be used to help educate, support and provide for the welfare of the children. After the children have completed their education, then the trust could have distributed the remaining moneys to the children.

Accordingly, a valid will with a trust provision may have succeeded in passing property to the husband's children and prevented a second or subsequent spouse, i.e. stepfather from obtaining the property.

In the event both the husband and wife die together and die without a will, then the natural parents have no say so as to who will take care of their minor children. At that point relatives and friends of the family may select a guardian by mutual agreement and in the event they fail to agree on a guardian, the probate court could make the selection.

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There can be circumstances when a probate court may appoint a stranger or agency to be guardian of your children. If you die without a will in some circumstances, your estate may pay more estate taxes than it would have if proper estate planning procedures had been used.

Your attorney can prepare a will which includes a trust that takes advantage of estate planning techniques designed to reduce the payment of the estate taxes. This can be significant, if you have a large estate.

### CONCLUSION

If you die without a will you lose your free agency to decide how you want your property and assets distributed. You give up your right to plan for your family. You defer to the state's intestacy laws, which may or may not be acceptable to you. You also increase the probate cost. Accordingly every adult should have a will. If you have any questions concerning durable powers of attorney, wills, trusts or probate, please call me.

Very truly yours,

[Attorney's name]

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Will with all of the property passing to the spouse and a family trust for the minor children

# PREVIEW

1. This form is similar to the preceding will forms with the exception that Paragraph 4.2 places the property given to the minor children in trust rather than conveying the property to the children outright. It does not contain any tax saving devices. If estate tax savings are desired, use the will that contains a marital deduction trust and other tax planning devices that should benefit larger estates.

2. The surviving spouse inherits the estate, however, in the event of both parents death, then the family trust avoids the need for a guardianship.

3. The family trust allows the trustee the freedom and flexibility to take care of the testator's children without opening a court supervised guardianship.

4. This Will form is appropriate where the testator's or testatrix's assets do not exceed the federal exemption equivalent. If the husband and wife die simultaneously then the estate could be taxable if the value of the estate exceeds the amount of the 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".

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

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

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

**PREVIEW**

5. The terms of the trust are specified in Paragraph 6.
  - a. The trust shall be maintained in a common trust fund and divided into separate accounts for each beneficiary.
  - b. The trustee may distribute the net income and principal of the trust as he or she decides for the use and benefit of the children, until all the children reach the age of 21.
  - c. The trust created by this form could be distributed as each child reaches the age of 21. If that is the desired intent, change provision 6.4 to state that the trust will be distributed to the beneficiaries as each child reaches the age of 21. Delete provision 6.5.

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6. Paragraph 7 states the fiduciary powers of the trustee.
7. Paragraph 7.1 states the Executor and trustee shall have the powers and duties as specified in the Texas Trust Code. If a more elaborate enumeration of the trustee's powers and duties is desired, insert the provisions contained in Paragraph 7 of the form for a long will with a family trust appearing in a later section.
8. Paragraph 9 contains administrative provisions that are not found in the simple will form.
9. The administrative provisions are as follows:

**THIS DOCUMENT**

- 9.1 States that wills concurrently executed by spouses are not the result of contract and may be independently revoked or amended.
- 9.2 Allows the Executor to begin distribution of income immediately upon death, regardless of whether or not the trust has actually come into existence.
- 9.3 States that the Executor may expend funds from the estate within 30 days of the death to the extent necessary to provide for the support of the spouse.
- 9.4 States that the Executor may elect to consent for gift tax purposes, gifts made by the other spouse or the testator.
- 9.5 States that life insurance proceeds or employee pension or benefit funds payable to the trustee shall not be used for the payment of taxes, liabilities etc.
- 9.6 States that the trustee or Executor is empowered to sell the testator's homestead, subject to surviving spouse's right.

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- 9.7 States that all inheritance taxes shall be paid out of the residuary estate.

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

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 Wills 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 TESTATOR OR TESTATRIX'S FAMILY

[If the client is married, then state the following:

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

[Or if the client is not married, then state the following:

1.1 I declare that I am not currently married. All references in this Will to "my spouse" are to the person, if any, that I marry after the date this will is signed.

[If the client has living children, then state:

1.2 I have [Number and names of the client's children]

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

[If the client does not have any living children, then state the following:]

1.2 I currently have no living children. All references in this Will to "my children" are to any children subsequently born to or adopted by me.

[If the client's spouse has children from previous marriages, then state the following:

My spouse has [Number of client's spouse's children from previous marriages:

[Next should those children be included in the will or not: If so then state:

My spouse's children from previous marriages, as defined above, shall be included in this will as my children for purposes of inheritance under this Last Will and Testament.

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[If those children shall not be included in the gift, then state:

# PREVIEW

My spouse's children from previous marriages as identified above shall not be included in this will as my children for purposes of inheritance under this Last Will and Testament.

[If the client has grandchildren, then state the following:

1.3 I have [Number of client's grandchildren:]

(a) 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.

[If the client does not have any grandchildren, then state the following:

1.3 I have no grandchildren. All references to grandchildren in this will are to any grandchildren subsequently born to or adopted by my children after the date this will is signed prior to my death.

[ If the client has deceased children, then state the following:

1.4 I have [Number of client's deceased children] deceased children.

[ If the client does not have any deceased children, then state the following:

1.4 I have no deceased children.

# THIS DOCUMENT

## 2. PAYMENT OF FUNERAL EXPENSES AND TAXES

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 charged 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.

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.

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3. PROPERTY BEING DISPOSED

# THANK YOU

# PREVIEW

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.

**[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].

I give the rest and residue of my property, except for the specific gift made above, including but not limited to real, personal, separate and community property, wherever situated of which I may die seized or possessed or to which I may be entitled at the time of my death to my spouse, [Client's Spouse]

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**[If No specific gift, then]**

4.1 I give all of my property, real, personal, separate and community, wherever situated of which I may die seized or possessed or to which I may be entitled at the time of my death to my spouse, [Client's Spouse].

4.2 In the event my spouse predeceases me or does not survive until ninety (90) days after my death or until this Will is probated, whichever occurs earlier, then in any of these events, I give all of my property, real, personal, mixed, community and separate, of every kind and character and wheresoever situated to my TRUSTEE in TRUST for the sole use and benefit of my children, per stirpes, to share and share alike in accordance with the Trust instrument created herein.

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(a) By use of the term "per stirpes" I mean that if any of my children should predecease me, then I direct my Trustee to give the predeceased child's share to [his or her] issue to share per stirpes in the inheritance that the deceased child would have received if that child had survived my death.

(b) If the deceased child or children have no issue, then I direct that the predeceased child's share be given in equal parts to my other living children. This gift shall be given "per capita" or in other words in equal shares to the then living children.

4.3 If at the time of my death I leave surviving me any other child or children born to or adopted by me subsequent to the date of this Will then it is my will and I direct that this Paragraph (4.3) shall inure to the benefit of and shall include any after-born or adopted child as a beneficiary hereunder along with my children named above, so that all of my children shall take and receive such property under this provision of my Will in equal proportions, to share and share alike in equal shares.

# THANK YOU

4.4 If my spouse and all of my children should predecease me and there are no other children born to or adopted by me and there be no issue of such predeceased children, then I give all of my

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property, real, personal, separate and community to [other beneficiaries' names and amounts or to share and share alike in equal shares]

**PREVIEW**

4.5 If any legatee or devisee under this Will other than my spouse shall die within a period of ninety (90) days after my death, such legatee or devisee shall be deemed to have predeceased me, and I direct that all the provisions of this Will be construed upon that assumption.

## 5. RESIDUARY TRUST

5.1 If my spouse should predecease me and I am survived by child, children, or descendants of my child or children, or any of the beneficiaries named herein are under any incapacity, then, I give the rest and residue of my estate, real, personal and mixed, and any lapsed gifts to my Trustee in trust to be administered as provided for in this Paragraph. The Trust shall be called by my name.

5.2 The Trustee shall maintain the Trust estate in one common Trust fund which shall be divided into separate shares for each beneficiary for purposes of administration and accounting. The Trustee shall provide to each beneficiary or Guardian of the beneficiary an annual accounting statement concerning the Trust account for the beneficiary's respective Trust estate; the accounting will include a statement of the Trust's earnings and distributions.

5.3 The Trustee shall distribute to such of my children and the descendants of any deceased children of mine or any other beneficiary of this trust, as shall from time to time be living, according to the terms of the trust, so much of the income and principal of the Trust as the Trustee in its sole discretion deems necessary and appropriate to provide for their health, education, maintenance and support in accordance with their station in life, considering all other sources of funds available to them.

(a) Any income not distributed shall be added to principal. Any distributions made under this paragraph need not be equal among beneficiaries and shall not be charged against their respective shares of this Trust. Distribution of the entire principal of this Trust is authorized if the Trustee determines such distribution to be in the best interests of the beneficiaries in accordance with the foregoing standard.

5.4 The Trustee of the trust shall distribute the child's account to each child in two parts: one-half at age [age i.e. twenty-one (21)] and the remainder at age [age i.e. thirty (30)].

5.5 This trust shall terminate upon the attainment of the age of [age i.e. thirty (30)] years by the youngest of my children then living at the time of the death of the last of my children, then under such age, and the Trust proceeds shall be distributed in fee simple and free of trust to such child or in the event of his or her death the descendants of any such child of mine, per stirpes and not per capita.

(a) If at such time of termination any descendant of a deceased child of mine who is entitled to distribution of a share of this Trust shall not have attained the age of twenty- one (21) years, is or becomes a minor, the proceeds shall be distributed to his or her guardian in fee simple and free of Trust.

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5.6 If all of my children and more remote descendants shall die before final termination of this Trust and all shares thereof, this Trust and all shares thereof shall terminate and all of the assets and property comprising the principal of the same shall be delivered and distributed in fee simple and free of trust as provided for in Paragraph 4 of this Will.

5.7 Anything in this Will to the contrary notwithstanding, I direct that any Trust created hereunder shall in all events terminate not later than twenty-one (21) years from and after the death of the survivor of the following persons, to-wit: All of my children and more remote descendants living at the time of my death; provided, however, that if any Trust created in this will is merged with any Trust created under any other instrument, such merged Trust shall not continue beyond the date on which the earliest maximum term of the Trusts so merged would, without regard to such merger, have been required to expire.

(a) I further direct that, as to any property at any time a part of any Trust estate (including a merged Trust) as to which under the laws of any state applicable to the property that Trust is required to be terminated at any time prior to its normal termination date, then the Trust as to that particular property shall terminate at the time required by the laws of the state.

(b) Upon such termination of that Trust in whole or in part, as the case may be, the assets and property then comprising the principal of that Trust, or the assets and property as to which that Trust is terminated, shall be delivered and distributed in fee simple and free of trust to those persons who at the time of such termination constitute the beneficiaries of that Trust estate in proportion to their respective presumptive interests in that Trust estate at the time of such termination.

5.8 Irrespective of other provisions of this Will, the Trustee may at any time after my youngest living child attains the age of twenty-one (21) years, terminate any Trust or any share thereof, if, in its sole judgment, the continued management of such Trust or any share thereof 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.

(a) 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 thereof as authorized by this paragraph.

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

6.1 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.

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6.2 The Trustee shall determine what income and what 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.

6.3 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.

6.4 In addition to the powers granted to my Trustee and Executor as stated under the Texas Trust Code, and specifically not intending to limit my fiduciary's powers granted above, but in addition to those powers, 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.

(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.

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(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.

(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 interest, in the discretion of the fiduciary.

# PREVIEW

(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.

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(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.

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(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:

- (i) Directly to such beneficiary;
- (ii) To the legal or natural guardian or person having custody of such beneficiary; or
- (iii) Directly for the maintenance or support of such beneficiary;

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

# PREVIEW

(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.

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(e) 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.

6.5 No fiduciary need bond or any bond to so long.

6.6 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.

6.7 The Trustee or any successor Trustee may at any time resign upon giving to the adult Trust beneficiaries then receiving or entitled to receive income from the Trust, or if there be none, to the 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.

(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.

# PREVIEW

6.8 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

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### EXECUTOR

7.1 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.

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

7.3 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].

# THIS DOCUMENT

[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 form as appropriate]

### GUARDIAN

7.4 In the event that any child or children of mine, natural or adopted, is incapacitated, as defined in the Texas Probate Code, 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

# THANK YOU

7.5 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, as defined in the Texas Probate Code, 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 [Alternate Guardian's Name], to act as Guardian of the person and the estate of said child or children.



7.6 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, as defined in the Texas Probate Code, 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

7.7 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.

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7.8 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.

7.9 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.

7.10 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.

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

### 8. ADMINISTRATIVE PROVISIONS

8.1 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.

8.2 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:

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

(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.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

8.7 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.

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

(a) My Trustee may also begin 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.

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8.9 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 any joint income tax return with my spouse or my spouse's estate.

8.10 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.

8.11 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.

8.12 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 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.

8.13 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.

## 9. GENERAL PROVISIONS

9.1 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.

9.2 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.

9.3 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 are an essential part of each and every benefit.

(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.

9.4 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 than an adopted child and such adopted child's lawful lineal descendant by blood or adoption shall be considered under any 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.

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9.5 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) 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.

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9.6 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.

9.7 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.

**THIS DOCUMENT**

9.8 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 held 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.

9.9 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 anyone who appears from the original Trust Agreement and/or Last Will and testament or a certified copy thereof to be a Trustee hereunder.

**THANK YOU**

9.10 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.

9.11 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 include any insurance policy on these items.

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(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

9.12 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.

(a) 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.

(b) 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.

9.13 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:

(a) the unlimited federal estate tax marital deduction allowable to my estate minus

(b) 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.

(c) 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.

(d) 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.

**PREVIEW**

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(e) 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.

9.14 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.

9.15 Uneconomical Trust. Irrespective of other provisions of this will, the Trustee may at any time terminate any Trust herein or any share of the trust if, in his or her 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.

9.16 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.

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].

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# PREVIEW

[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.

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

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.

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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]

\_\_\_\_\_  
Witness Name

# THIS DOCUMENT

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

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Address and Telephone Number  
**THANK YOU**  
SELF PROVING AFFIDAVIT

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

Before me the undersigned authority, on this day personally appeared [Client's name],  
\_\_\_\_\_ and \_\_\_\_\_, known to me to be [Testator or Testatrix],

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and the witnesses, whose names are subscribed to the annexed or foregoing instrument in their respective capacities.

# PREVIEW

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 our 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.

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 witnesses.

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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).

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.

# THIS DOCUMENT

\_\_\_\_\_  
[Client's name]

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Name

# THANK YOU

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

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

witnesses \_\_\_\_\_ **LegalFormsForTexas.Com** on \_\_\_\_\_

**PREVIEW**

Notary Public, State of Texas

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

My commission expires: \_\_\_\_\_

[or Notary's Stamp]

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**THIS DOCUMENT**

**THANK YOU**

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Letter to a client to have the draft will reviewed prior to signature

**PREVIEW**

1. The following form is a letter that may be sent to a client that explains that the attorney has completed a draft of the client's estate planning documents, and desires the client to carefully review the same before the client signs the documents.

[Date]

**ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION**

[Client's name]

[Client's address]

Regarding: Estate Planning Document Drafts

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Dear [Client' salutation:

Enclosed please find the drafts of your estate planning documents for your review. We know you are anxious to have these matters concluded, so please carefully review the documents. Please make any corrections or revisions you feel are necessary and return them to us for final print-out.

Please pay special attention to:

1. The correct spelling of all proper names, including institutions, if named, and correct addresses;
2. On documents showing dates of birth, check for accuracy of birth date/s. Check for correct addresses where indicated.

**THIS DOCUMENT**

If you have any questions about what the documents say, please call. We will be happy to answer all your questions and, if requested, go over the documents line by line to explain their meaning to you.

If no changes are necessary, please write "Approved" and sign and date the first page of the draft copy that is enclosed with this letter.

**THANK YOU**

Once we are in receipt of the approved drafts, we can schedule a mutually agreeable appointment for your signing them. If you have any questions concerning durable powers of attorney, wills, trusts or probate, please call me at [Attorney's phone number].

Very truly yours,

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[Name of attorney]

**PREVIEW**

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**THANK YOU**

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**Filing a will with the county clerk's office for safekeeping**

**PREVIEW**

1. Some testators prefer to have their wills filed of record with the county clerk's office. If a testator desires his will to be filed of public record, then the practitioner should check with the county clerk and see if the clerk has a form which they have designed for this purpose.
2. Two disadvantages of filing a will with the clerk's office is that the will becomes public knowledge as soon as it is filed, any one can get a copy of it, and the will should be retrieved and destroyed if the testator wants to make a new will.
3. The following form is an example of an affidavit of a testator arranging for his or her Will to be filed of record with the County Clerk's office. It also contains the filing letter to the clerk.

**PLEASE DO NOT COPY**

[Date]

[Clerk's Name]  
[County's name] County Clerk's Office  
[Address]  
[City, State, Zip Code]

Dear [Clerk's Name]:

Please file the Last Will and Testament for [Client's name]. Enclosed is a check for \$ [Amount] to cover the filing fee.

**THIS DOCUMENT**

Thank you in advance for your prompt attention to this matter.

Very truly yours,

[Attorney's name]

**THANK YOU**

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# PREVIEW

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

## TESTATOR OR TESTATRIX'S AFFIDAVIT

BEFORE ME, the undersigned, personally appeared [Client's name] (hereafter referred to as "Testator or Testatrix") who, under oath states the following:

1. My name is [Client's name].
2. I reside in [County's name] County, Texas.
3. I have executed a Last Will and Testament dated , .
4. I desire my Last Will and Testament to be tendered to the County Clerk of [County's name] County, Texas for safe-keeping.
5. I further state that the document being filed herewith is my Last Will and Testament and has been properly executed.

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\_\_\_\_\_  
Testator or Testatrix  
**THIS DOCUMENT**

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

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

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

\_\_\_\_\_  
Notary Public, State of Texas  
**THANK YOU**

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

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
[or Notary's Stamp]

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**PREVIEW**

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**THANK YOU**

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Letter to a client that explains living trusts vs. traditional wills & testamentary trusts

# PREVIEW

1. This letter may be sent to a client to assist him or her in determining whether to use a living trust or a will with a testamentary trust.

[Date]

**ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION**

[Client's name]  
[Client's address]

# PLEASE DO NOT COPY

Regarding: Living Trusts in Texas

Dear [Client's salutation]:

The following discussion should answer some questions you may have regarding the pros and cons of using a living trust in Texas versus using a traditional will that contains a testamentary trust.

## WHAT IS A TRUST?

A trust is a legal arrangement whereby property may be given by a donor or trustor to a trust for the use and benefit of another person known as the beneficiary.

# THIS DOCUMENT

Trusts are useful for protecting and preserving property and in some instances in reducing tax liability. Trusts may be created and effective while the donor is alive or may take effect at the donor's death. The person who controls the trust property is known as the trustee. The trustee acts for in behalf of the beneficiary named in the trust document.

A common trust, known as the revocable living trust, is used frequently by estate planners. It has some advantages and some disadvantages. A living trust is created while the donor is alive. A trust which is typically created in a donor's will and becomes effective upon the donor's death is known as a testamentary trust.

The donor can also be both a beneficiary and the trustee. This means that a donor can have full control over all of the assets placed into the trust. Note there may be some tax considerations which would suggest some third person be named as the trustee, however you should discuss tax consequences of trust and estate planning with a qualified tax advisor such as a CPA (Certified Public Accountant) or tax / estate planning attorney.

# THANK YOU

LIVING TRUSTS

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A living trust is therefore a trust which is created during the donor's lifetime whereby property is placed into the trust for the use and benefit of the parties named in the trust agreement. The donor can be one of the beneficiaries named in the trust.

In order to create a trust the donor transfers ownership of the assets that he or she would like to place in the trust from himself as an individual to a trustee, who will serve as trustee of the trust.

Trusts should always be memorialized with a written document. Once the donor transfers money from himself to the trust, the assets are no longer in his or her personal name, this gives rise to the ability of a trust to reduce or avoid probate when a person dies. If all of a person's assets are in the name of a trust when a donor dies then obviously there is nothing to probate.

In a living will the donor transfers his or her property to the trust, then the donor names a trustee. If the donor remains as trustee, then he or she maintains full control over all his or her assets which are contained in the trust. The donor can manage & use the property, including buying, selling, leasing, giving or spending as he or she sees fit.

### **WHAT ARE SOME ADVANTAGES OF HAVING A LIVING TRUST? AVOIDING PROBATE**

The property placed in the living trust does not have to be probated. Those assets would be given directly to the beneficiaries pursuant to the terms of the trust agreement **THUS AVOIDING** the expense and delay of probating a will.

One advantage of a living trust is therefore to avoid probate. In some states, the probate process is an extremely complicated, expensive and lengthy ordeal.

Texas, as well as some other states, have a simplified and an inexpensive probate system, therefore a living trust may not be as desirable in Texas as compared to some other states. Since Texas has an efficient probate system, many Texas attorneys still prefer the use of a conventional will and having the will probated instead of setting up a living trust.

One reason for this is that in Texas a person is allowed to name an Independent Executor who can probate the will and act without posting a bond and act without direct court supervision concerning the administration of the estate. The Independent administration—without bond therefore reduces the cost of probate and simplifies the process.

Once a will has been probated, the court issues Letters of Testamentary to the Independent Executor. That person may then administer the will pay the expenses and bills and then distribute the property without court approval or supervision. The executor is only required to file an inventory and an appraisal for the court which lists the assets in the estate as of the date of the person's death.

Avoiding probate costs & expense can become a significant expense if the donor owns real property in more than one state. The use of a living trust can circumvent the need for probate proceedings in other states where property is owned. A probate in Texas generally will not

transfer title to real estate in other states to the heirs in a state other than Texas, therefore an ancillary or another probate is generally required to transfer property to the named beneficiaries when the property is owned in more than one state.

Ancillary probates are supposed to be simpler and less complicated than a main probate, the difficulty and expense is that attorney's must be consulted in each state where property is owned and the ancillary probate procedures must be complied with; this generally requires paying a filing fee & obtaining an attorney to handle the ancillary probate. Consequently, in this situation, a living trust could avoid some probate expense.

### **MORE FLEXIBILITY WITH A LIVING TRUST**

Another benefit of a living trust is its flexibility. The donor can select himself or any other person to be the trustee. The trustee then has full control over the assets in the trust as dictated by the terms of the trust. If the donor is the trustee he or she can change or alter the terms of the trust at anytime.

The donor can revoke or cancel the trust at anytime, if he or she is the trustee. When the donor dies, the living trust, which actually is a revocable living trust states how and when the donor's property shall be distributed. Assets can be distributed to the beneficiaries in the time periods, amounts, and manner as stated in the trust document.

For instance, the donor can specify that a certain amount of money should be used to finance children's or grandchildren's education. Likewise the donor could reserve or specify that moneys from the estate could be used for payment of medical expenses or special needs of his or her beneficiaries such as a disabled or handicapped children.

### **THIS DOCUMENT PRIVACY**

The living trust document is generally not filed with the probate court, therefore its terms are not open for inspection by the public. On the other hand a will must be filed with the probate court in order to be admitted to probate. It then becomes a public document. The will may then be inspected and reviewed as any other public document. Therefore, if you are interested in complete privacy, a living trust may be preferable to a will with a testamentary trust.

### **AVOIDING GUARDIANSHIPS OR CONSERVATORSHIPS**

If a person becomes incapacitated before they die, the incapacitated person may not legally be able to handle his or her affairs. Accordingly a guardianship may be required in certain circumstances to handle the incapacitated person's financial affairs.

If however, the incapacitated person's assets are in a trust, the trustee can continue managing the incapacitated person's affairs unless there is a provision in the trust agreement that requires special circumstances or revisions relating to the incapacity of the donor. Therefore, if you become unable to manage your affairs, and your property is in a trust you may be able to avoid having a guardianship opened to manage your affairs. If the donor is the trustee, most trusts



provide for a successor trustee if the initial trustee becomes incapacitated. Consequently, in the event a donor that is a trustee becomes incapacitated, instead of having to obtain a guardianship, the trust agreement generally provides for a successor trustee so that the trust is continued and a guardianship is not required.

## LITIGATION AND CONTEST

Law books are full of suits where unhappy heirs have sought to contest deceased person's will. A will can be contested if it can be proved that the person writing the will, the testator, was unduly influenced to make gifts to one person or another or that some one in a position of trust benefited in the will by unduly influencing the testator. The unhappy relatives can argue that some other party inserted their desires in the testator's will due to their position of trust.

Likewise, the will can be contested if it can be proved that the testator was not of sound mind at the time he or she signed the will. The above relates to the lack of capacity or undue influence. Those questions must be decided by a jury if sufficient evidence has been obtained and a suit has been filed.

It is much harder to contest the creation of a trust since the donor or person creating the trust generally has lived with benefits of the trust before his or her death in most situations.

## SECOND MARRIAGE SITUATIONS

If the donor desires to insure that his or her separate property is protected upon marriage to a second spouse, a trust can be useful in allowing a property to retain its separate character rather than being considered community property. A frequent request of people with estate planning concerns is their desire to have their property given to their spouse and at their spouse's death, their property given to their natural children.

Many testators do not want the spouse to remarry and have all of his or her property given to the new spouse and his or her natural children be disinherited. Accordingly a trust can be very useful to preserve the testator's estate so that the natural children become the ultimate beneficiaries. Likewise, a trust can be useful to make sure that a business owned by a testator or donor remains with his family and stays with his children so in the event of a remarriage, it is not considered part of the community property estate in a subsequent marriage.

## NEED FOR A WILL EVEN IF YOU HAVE A TRUST

Even if you have a living trust it still may be good idea TO HAVE a will. The reason is that a **living trust may not be able to properly designate a guardian for minor children. Also you may leave assets out of the trust and thereby die intestate as to some of your assets.** For instance you may inherit property after the time the living trust was created or you may have inadvertently left property out of living trust. Those assets then must be distributed by your will and if you have no will the property would then be distributed pursuant to the intestacy laws of your state.

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Your will can leave your property to your living trust or specify the assets to be given in a manner different than the living trust. It is therefore a good idea to have a will even if you have a living trust.

**PREVIEW**

### **SOME FINAL CONSIDERATIONS**

Other considerations regarding living trusts are that there may be some estate tax considerations which you should review with a qualified tax advisor before you enter in to a living trust. Trusts are generally more expensive to create and establish than a simple will, you must also transfer properties to the trust.

In the case of real estate, deeds should be prepared, executed and filed, in the case of personal property bills of sale or assignments should be prepared. When you create a trust you must transfer stocks, bonds, bank accounts, etc. Failure to effect the transfer may render the property outside the trust and therefore defeat the purpose for entering into the trust. Changing bank accounts, stocks, bonds, cars, real estate, etc. can require much work and be relatively expensive. There also may be additional record keeping and tax reporting that would have not been incurred but for the creation of a trust.

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### **CONCLUSION**

Living trusts can be very useful for the right circumstances. You should check with your attorney to see whether or not a living trust is for you. Many attorneys in Texas still recommend having a will with or without a trust rather than creating a living trust. On the other hand, you will find many attorneys who are strong advocates of living trusts (many advocate the use of a living trust with a by pass trust as a means to save on state taxes).

**THIS DOCUMENT**

If you have any questions concerning durable powers of attorney, wills, trusts or probate, please call me at [Attorney's phone number].

Very truly yours,

[Name of attorney]

**THANK YOU**

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[Name of person making the will]

[Address for the person making the will]

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WHEN TO UPDATE YOUR WILL

Dear [Salutation for the Name of person making the will]:

From a tax standpoint, it is important to have your Will reviewed if:

1. You have a Will which was executed prior to 1982 and which has not been amended since that date;

2. You and your spouse together have an estate valued at more than double the federal exemption equivalent. Your estate include pensions and life insurance and your Will leaves all of your property or right to your spouse

**THIS DOCUMENT**

a. The federal exemption equivalent is an amount of money established in the Internal Revenue Code that provides a ceiling on which federal inheritance taxes may be owed on estates that are greater than the exemption amount.

b. The following chart shows the amount of money which is exempt from estate taxes by the year in which the person died.

c. For persons that died before 1998 the maximum exemption equivalent was \$600,000. For persons dying after 1998 the following exemption equivalents apply:

**Federal Exemption Equivalent Chart for Persons Dying From 1998 to 2011**

Year	Estate Tax Credit
1998	\$625,000
1999	\$650,000
2000	\$675,000
2001	\$675,000
2002	\$1,000,000
2003	\$1,000,000

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2004	\$1,500,000
2005	\$2,500,000
2006	\$2,000,000
2007	\$2,000,000
2008	\$2,000,000
2009	\$3,500,000
2010	Scheduled repeal
2011*	\$1,000,000 *In absence of a re-enactment

3. You have an estate of over \$1 million and your Will leaves property in trust for your children

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4. You or your spouse is not a citizen of the United States, and your Will has not been amended since 1988 to contain special provisions relating to non-citizens;

5. You have had substantial changes in the value of your estate.

6. In general, you should review your Will to be sure that the following items are in compliance with your present wishes:

- a. Names of executors and trustees, including alternates;
- b. Names of guardians of minor children, including alternates;
- c. Ages for distribution to children of beneficiaries;
- d. Identity of beneficiaries to receive special bequests or charitable contributions;
- e. Changes in the financial or personal circumstances of your beneficiaries requiring changes to their benefits under your estate plan.

If you have any questions concerning durable powers of attorney, wills, trusts or probate, please call me.

Sincerely,  
**THANK YOU**

S. Lee Stevenson, Jr.

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# PREVIEW

Attorneys at Law, Partnership of Professional Corporations  
Colonnade I Building  
9901 IH 10 West, Suite 800  
San Antonio, Texas 78230

Phone (210) 690-9944 ♦ Fax (210) 690-3635 ♦ e-mail: [LeeStevenson@att.net](mailto:LeeStevenson@att.net)

## ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION

[Name of person making the will]

[Address for the person making the will]

# PLEASE DO NOT COPY

REGARDING LETTERS OF INSTRUCTIONS

Dear [Salutation for the Name of person making the will]:

In view of your concern about your overall estate plan, we recommend that you complete the enclosed written Letter of Instructions (the Letter). This is an organized way to give your family important information about your finances. This Letter is designed to tell someone everything \*\*\*he or she\*\*\* should know in order to handle your personal affairs, as you wish -- the important details that may not be found in your Will. A Letter of Instructions can, therefore, greatly simplify the administration of your estate.

The Letter can be as necessary to your family, economically, as your Will. It is not only useful to others when you die, it can also be vital to you if you should be incapacitated by serious illness or injury. And, in the very process of doing it, you'll put your affairs in order for your continuing money management needs.

Everybody who has (or needs) a Will should complete a Letter of Instructions, whether or not you handle the family accounts. Ideally, a husband and wife should prepare one together. Of course, the person who handles the family accounts should write one for the person who will have to take over. Generally, this means you address it to your wife, husband, adult child, your lawyer or other Executor.

The Letter does two big jobs:

1. identifies the location of your important papers;
2. expresses certain personal desires.

A Letter is not a Will or a substitute for one. Your Will tells your Executor how to dispose of all your property and personal effects. The Letter informs the Executor where your property is and helps him or her to do the best possible job.

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# THANK YOU

A Will may not be opened and read immediately after a person's death. Any immediate instructions for your family, including any preferences for your own funeral, should therefore go into the Letter which can be opened and read at once.

**PREVIEW**

Perhaps one reason many people put off completing the Letter is the bewildering job of organizing all of the requested detail. A few pointers: While it is personal rather than legal, and usually addressed to a husband or wife, it should also be clear to any third person who may (in case of a common disaster) have to find and work with your papers.

Be specific about locations -- "in my safe deposit box at the name of your bank" or "in the bottom left-hand drawer of my desk" or "in blue file of basement cabinet". (If your papers aren't filed, this will force you to file them.)

If you have certain special wishes, say about the education of your children, add a page or so to describe them.

**PLEASE DO NOT COPY**

Make several copies of the Letter. Clip one copy to your Will, send one to our firm as your lawyer, one copy to your Executor. You may also want to keep one in the desk drawer where your family may look first. Don't forget to update it as needed, perhaps annually.

Once you've written your Letter, you are free to go about your regular business. You will have the comfort of knowing that your financial affairs should be in good order for the people who are most important to you.

We hope that the Letter of Instructions will be of great benefit to you. If you have any questions concerning durable power of attorney, wills, trusts or probate, please call me.

**THIS DOCUMENT**

Sincerely,



S. Lee Stevenson, Jr.

**THANK YOU**

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# LETTER OF INSTRUCTIONS

# PREVIEW

## 1. HOW MUCH YOU SHOULD EXPECT

From my employer: \$

Life insurance: \$

Profit sharing: \$

Accident insurance: \$

Other benefits: \$

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Person to contact, department, phone:

From Social Security: \$[lump sum] \$[plus monthly benefits]

From the Veterans Administration: \$

(You must inform the VA) Veteran Number:

REVISED AND UPDATED AS OF:

## 2. FIRST THING TO DO

# THIS DOCUMENT

A. Call to help.

(relative or friend)

B. Notify my employer:

(Name and Telephone Number)

C. Make arrangements with funeral home. See Page

D. Request at least ten (10) copies of his death certificate. The funeral director can help get them for you.

# THANK YOU

E. Call our lawyer:

(Name and Telephone Number)

F. Contact our Social Security Office.

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G. Get and process my insurance policies.

H. Notify the bank which holds our home mortgage and obtain the credit life insurance applicable to this or any other loan that has that coverage:

(Name and telephone number)

I. Notify other creditors.

3. LOCATION OF FAMILY PERSONAL PAPERS

A. Last Will and Testament:

B. Birth and Baptismal Certificates:

C. Communion and Confirmation Certificates:

D. School Diplomas:

E. Marriage Certificates:

F. Military Records:

G. Naturalization Papers:

H. Other (Adoption, etc.):

4. SAVINGS ACCOUNTS:

Bank:

Address:

Name on Account:

Account Number: Type:

Location of Passbook (or Certificate):

Any Special Instructions:

Repeat for each savings account.

(Note that the bank is required by law to freeze the owner's account as soon as notified of death).

5. CHECKING ACCOUNTS:

**PREVIEW**

**PLEASE DO NOT COPY**

**THIS DOCUMENT**

**THANK YOU**

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Bank:

**PREVIEW**

Address:

Name on Account:

Account Number: Type:

The canceled checks and statements are kept in:

Repeat to cover all accounts of husband and wife.

(Note that the bank is required by law to freeze the owner's account as soon as notified of death).

**PLEASE DO NOT COPY**

6. INCOME TAX RETURNS

Location of all previous returns -- federal, state and city:

Our Tax Accountant:

(Name, Address and Telephone Number)

7. LIFE INSURANCE

Location of all policies:

**THIS DOCUMENT**

A copy of the death certificate must be sent to each company in order to collect benefits.

Policy: Insurance Company:

\$ [Amount]

Company Address:

Whose Life is Insured:

Kind of policy: Policy Number

**THANK YOU**

Beneficiaries:

Issue Date: Maturity Date:

How Paid Out:

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Your other options on payout.

Other special facts:

# PREVIEW

Repeat information above for each policy.

For \_\_\_\_\_ in veteran's insurance, call our local Veterans Administration office: (Telephone Number)

## 8. ALL OUR OTHER INSURANCE

Accident:

Company:

Address:

Policy Number:

Beneficiary:

Coverage:

Location of Policy:

Agent, if any:

Car, Home and Household:

Give information below for each policy you have.

Coverage:

Company:

Address:

Policy Number:

Location of Policy:

Term (when to renew):

Agent, if any:

Me n a g :

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# THIS DOCUMENT

# THANK YOU

Coverage:

**PREVIEW**

Company:

Address:

Policy Number:

Location of Policy:

Agent, if any:

Or through employer or other group:

**PLEASE DO NOT COPY**  
Repeat for all medical insurance policies.

Mortgage Insurance - See Page

9. CAR

Year, make and model:

Identification Number:

Location of Papers: (Title, Registration)

Repeat for each car.

**THIS DOCUMENT**

10. SOCIAL SECURITY

Name: Card Number:

Location of Cards:

You must apply in order to get your social security benefits. Call Social Security office for appointment. They will tell you what to bring: (Telephone Number)

11. FUNERAL PREFERENCE

**THANK YOU**

My choice of funeral home, if any:

Type of funeral preferred:

Other personal preferences or desires:

12. RELATIVES AND FRIENDS TO INFORM

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Location of names, addresses and telephone numbers:

**PREVIEW**

13. FUNERAL AND CEMETERY INFORMATION

Cemetery Plot:

Location: When purchased:

Deed Number: Location of Deed:

Other information: (perpetual care, etc.)

Facts for Funeral Director (bring them with you)

**PLEASE DO NOT COPY**

Name:

Residence:

Telephone Number:

Marital Status: Spouse:

Date of Birth: Birthplace:

Father's name and birthplace:

**THIS DOCUMENT**

Mother's maiden name:

Length of residence in state: in U.S.A.:

Military Service: When:

Social Security Number:

Occupation:

Life Insurance: (company names and policy numbers)

**THANK YOU**

14. DOCTORS' NAMES AND ADDRESSES

Doctors:

[Name, address, telephone number and whose doctor]

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Pediatrician:

Dentists: (Name, address, telephone number and whose doctor)

**PREVIEW**

Children's Dentist:

15. SAFE DEPOSIT BOX

Bank:

Address:

In whose name: Number:

Location of Key: **PLEASE DO NOT COPY**

List of Contents:

(Note that in the event of death the bank is required by law to seal the owner's box as soon as notified.)

16. CREDIT CARDS

Find all credit cards. Those in my name should be either canceled or converted to your name.

Repeat information below for each card. Include general cards (such as Master Charge and others) and store and oil cards.

**THIS DOCUMENT**

Company:

Address:

Name on Card:

Account Number: Location:

17. OUR HOUSE

**THANK YOU**

In whose name:

Address: Lot:

Block: Section:

On my card: **LegalFormsForTexas.Com**

Other descriptions needed:

Our lawyer at closing: (Name and address)

Location of statement of closing, policy of title insurance, deed, land survey, etc.

Mortgage:

Bank holding mortgage:

Amount of original mortgage:

Date taken out: Owed now:

Method of payment:

Location of payment book, if any (or mortgage payment statements):

Life insurance on mortgage? Yes No

If yes, policy number:

Location of policy:

Notify bank immediately of my death; the unpaid mortgage will be automatically paid by the insurance and the house is owned free and clear.

Veterans Exemption Claim, if any

Location: Amount:

House Taxes:

Location of receipts:

Amount: \$

Lease, if renting:

Location of contract: Expires date:

### 18. SELLING A HOUSE

Please consult your attorney and tax advisor concerning what, if any, taxes may be owed when you sell your home. For further information, please have the following information:

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**PREVIEW**

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**THIS DOCUMENT**

**THANK YOU**

Total cost of the home-buying year closing statement if possible:

**PREVIEW**

Improvements -- total cost: \$

Initial purchase price: \$

Closing fee on purchase: \$

Other buying costs (real estate agent, lawyers' fees, taxes, etc.)

Final costs of house (total of all figures): \$

Also add your costs to see (closing fee, legal, real estate agent, etc.):

**PLEASE DO NOT COPY**

Itemized House Improvements

Improvement: Cost: \$

Location of bills for improvements:

19. LOANS (other than mortgages)

Bank:

Address:

**THIS DOCUMENT**

Name on loan:

Account Number: Monthly Payment: \$

Location of papers (and payment book, if any):

Collateral, if any:

Life insurance on loan? Yes \_\_\_\_ No \_\_\_\_

Repeat if more than one loan, and for other sources

**THANK YOU**

20. INVESTMENTS

Repeat information below for all stocks and bonds.

Stocks:

**LegalFormsForTexas.Com**  
Company



Name on certificate: **PREVIEW**

Number of Shares: Certificate Numbers:

Location of certificates:

Bonds (U.S. Savings and others):

Issuer:

Name on bond:

Amount: Bond Number: **PLEASE DO NOT COPY**

Issue Date: Maturity Date:

Location of bond:

Other investments

21. WARRANTIES, GUARANTEES, PURCHASE RECEIPTS

Item:

Warranty location: **THIS DOCUMENT**

Receipt location:

Repeat for each item.

**THANK YOU**

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DECLARATION FOR MENTAL HEALTH TREATMENT

PREVIEW

My name is [Name of person making the will].

I am an adult of sound mind.

I willfully and voluntarily make this declaration for mental health treatment.

I ask that this declaration be followed if it is determined by a court that my ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, is impaired to such an extent that I lack the capacity to make mental health treatment decisions.

"Mental health treatment means

PLEASE DO NOT COPY

1. electroconvulsive or other convulsive treatment,
2. treatment of mental illness with psychoactive medication, and
3. preferences regarding emergency mental health treatment.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder.

These symptoms may include:

[list the specific symptoms name]

THIS DOCUMENT

\_\_\_\_\_  
\_\_\_\_\_

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, then my wishes regarding psychoactive medications are as follows:

[Place an X on each line that is applicable.]

THANK YOU

\_\_\_\_ I consent to the administration of the following medications:

[List the medications or state: Any and all medication deemed appropriate by the attending physician.]

or [LegalFormsForTexas.Com](http://LegalFormsForTexas.Com)

\_\_\_ I do not consent to the administration of any medications.

**PREVIEW**

\_\_\_ I consent to the administration of a federal Food and Drug Administration approved medication that was only approved and in existence after my declaration and that is considered in the same class of psychoactive medications as follows:

[List the medications or state: Any and all medication deemed appropriate by the attending physician.]

\_\_\_ Conditions or limitations:

[List the conditions or limitations on the administration of medications].

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CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

[Place an X on each line that is applicable]

\_\_\_ I consent to the administration of convulsive treatment.

\_\_\_ I do not consent to the administration of convulsive treatment.

Conditions or limitations:

**THIS DOCUMENT**

[List the specific limitations]

---

---

**PREFERENCES FOR EMERGENCY TREATMENT**

In an emergency, I prefer the following treatment

FIRST [circle one] Restraint/Seclusion/Medication.

**THANK YOU**

SECOND [circle one] Restraint/Seclusion/Medication.

THIRD [circle one] Restraint/Seclusion/Medication.

I prefer the following to administer restraint, seclusion, and/or medications to me:

[Place an X on each line that is applicable]

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\_\_\_\_\_ male

# PREVIEW

\_\_\_\_\_ female

\_\_\_\_\_ I do not have a preference

Options for treatment prior to use of restraint, seclusion, and/or medications:

[List].

---

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Conditions or limitations :

[List].

---

---

## ADDITIONAL PREFERENCES OR INSTRUCTIONS

# THIS DOCUMENT

[List].

---

---

Signed on \_\_\_\_\_.

# THANK YOU

Name of person making the will

## STATEMENT OF WITNESSES

I declare under penalty of perjury that, [Name of person making the will], the principal's name has been represented to me by the principal, that the principal signed or acknowledged this declaration in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of his declaration and is signing voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this

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document, and that I am not a provider of health or residential care to the principal, an employee of a provider of health or residential care to the principal, an operator of a community health care facility providing care to the principal, or an employee of an operator of a community health care facility providing care to the principal.

**PREVIEW**

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to and do not have a claim against any part of the estate of the principal on the death of the principal under a will or by operation of law.

Signed on \_\_\_\_\_.

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

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**PLEASE DO NOT COPY**

**THIS DOCUMENT**

**THANK YOU**

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**NOTICE TO PERSON MAKING A DECLARATION  
FOR MENTAL HEALTH TREATMENT**

**PREVIEW**

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health treatment and specifically three types of mental health treatment: psychoactive medication, convulsive therapy, and emergency mental health treatment. The instructions that you include in this declaration will be followed only if a court believes that you are incapacitated to make treatment decisions. Otherwise, you will be considered able to give or withhold consent for the treatments.

This document will continue in effect for a period of three years unless you become incapacitated to participate in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapacitated.

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You have the right to revoke this document in whole or in part at any time you have not been determined to be incapacitated.

**YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED BY A COURT TO BE INCAPACITATED.**

A revocation is effective when it is communicated to your attending physician or other health care provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration is not valid unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

**THIS DOCUMENT**

**THANK YOU**

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**DECLARATION OF APPOINTMENT OF GUARDIAN  
FOR MY CHILDREN IN THE EVENT OF MY DEATH OR INCAPACITY**

**PREVIEW**

I, [Name of person making the will], make this Declaration to appoint as guardian for my child or children, listed as follows, in the event of my death or incapacity:

I designate my [Name of person's SPOUSE making the will] to serve as guardian of the person and estate of my child or children.

I designate [Name of FIRST INDEPENDENT EXECUTOR] as my first alternate guardian of the person and estate of my child or children.

I designate [Name of SECOND INDEPENDENT EXECUTOR] as my second alternate guardian of the person and estate of my child or children.

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If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes guardian of my child or children.

Signed on \_\_\_\_\_.

\_\_\_\_\_  
[Name of person making the will]  
[Address for the person making the will]

**SELF-PROVING AFFIDAVIT**  
**THIS DOCUMENT**

Before me, the undersigned authority, on this date personally appeared, [Name of person making the will], the Declarant, and \_\_\_\_\_ and \_\_\_\_\_ as witnesses, and all being duly sworn, the Declarant said that the above instrument was \*\*\*his or her\*\*\* Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or incapacity and that the Declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the Declarant sign the declaration, that they signed the declaration as witnesses, and that the Declarant appeared to them to be of sound mind.

\_\_\_\_\_  
[Name of person making the will]  
**THANK YOU**

Date: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Address: [LegalFormsForTexas.Com](http://LegalFormsForTexas.Com)

Date: \_\_\_\_\_  
Witness Signature: \_\_\_\_\_

**PREVIEW**

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

State of Texas  
County of [County where the probate will be filed]

Subscribed and sworn to before me by [Name of person making the will] and by the witnesses

\_\_\_\_\_ and \_\_\_\_\_ on \_\_\_\_\_  
**PLEASE DO NOT COPY**

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

\_\_\_\_\_  
Notary's typed or printed name  
My commission expires: \_\_\_\_\_  
[or Notary's Stamp]

**THIS DOCUMENT**

**THANK YOU**

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Cremation of a decedent's remains and Appointment of agent to control disposition of remains

# PREVIEW

Section 711.002 of the Texas Health & Safety Code provides as follows:

## Disposition of Remains; Duty to Inter

(a) Unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and are liable for the reasonable cost of interment:

(1) the person designated in a written instrument signed by the decedent;

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(2) the decedent's surviving spouse;

(3) any one of the decedent's surviving adult children;

(4) either one of the decedent's surviving parents;

(5) any one of the decedent's surviving adult siblings; or

(6) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

# THIS DOCUMENT

# THANK YOU

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APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

**PREVIEW**

I, [Name of person making the will], being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by [Name of person's SPOUSE making the will].

With respect to this document only, I hereby appoint such person as my agent Attorney-in-fact.

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

**PLEASE DO NOT COPY**

Set forth below are any special directions limiting the power granted to my agent.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THIS DOCUMENT**

**AGENT:**

Name: [Name of person's SPOUSE making the will]

Address: [Address for the person making the will]

Telephone Number:[Name of person's SPOUSE TELEPHONE NUMBER making the will]

**SUCCESSORS:**

If my agent dies, becomes legally disabled, resigns, or refuses to act, I hereby appoint the following persons Each to act here and successively, in the order named to serve as my agent (Attorney-in-Fact) to control the disposition of my remains as authorized by this document:

**THANK YOU**

**1. First Successor**

Name: [Name of FIRST INDEPENDENT EXECUTOR]

Address:[Address of FIRST INDEPENDENT EXECUTOR]

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Telephone Number: [Telephone number for the FIRST INDEPENDENT EXECUTOR]

**PREVIEW**

1. **Second Successor**

Name: [Name of SECOND INDEPENDENT EXECUTOR]

Address: [Address of SECOND INDEPENDENT EXECUTOR]

Telephone Number: [Telephone number for the SECOND INDEPENDENT EXECUTOR]

**DURATION:**

This appointment becomes effective upon my death.

**PLEASE DO NOT COPY**

**PRIOR APPOINTMENTS REVOKED:**

I hereby revoke any prior appointment of any person to control the disposition of my remains.

**RELIANCE:**

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

**THIS DOCUMENT**

Date of Signature: \_\_\_\_\_

\_\_\_\_\_  
[Name of person making the will]

State of Texas

County of [County where the probate will be filed]

This instrument was acknowledged before me on \_\_\_\_\_ by [Name of person making the will].

**THANK YOU**

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Notary's typed or printed name  
My Commission Expires \_\_\_\_\_

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[or Notary's Stamp]  
**PREVIEW**

**PLEASE DO NOT COPY**

**THIS DOCUMENT**

**THANK YOU**

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MEDICAL RELEASE and  
AUTHORIZATION FOR USE AND RELEASE OF HEALTH INFORMATION  
**PREVIEW**  
Per the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

SECTION I

Name [Name of person making the will] D.O.B. \_\_\_\_\_ SSN# \_\_\_\_\_

By signing this authorization form, I give [Name of person's SPOUSE making the will] permission to release all or part of my medical records, history and information to [Name of person's SPOUSE making the will].

SECTION II

**PLEASE DO NOT COPY**

I authorize any and all health care providers, doctors, and any one else that this release is given to, to release any and all medical records, data, charts, information etc. to [Name of person's SPOUSE making the will].

My information will remain available to the person or agency indicated until this is authorization is revoked in writing.

I understand that my medical records, information and history contain protected health information.

My health care provider is authorized and directed to permit the examination of, and copying, or reproduction in any manner whether mechanical, photographic or otherwise, by [Name of person's SPOUSE making the will], or such other person as he may authorize, of all or any portions desired by him of the following:

a. Hospital records, x-rays, x-ray readings and reports, laboratory records and reports, all tests of any type, character, and reports thereof, statements of charges, any and all of my records pertaining to any and all hospitalization, history, condition, treatment, diagnosis, prognosis, etiology, or expense;

b. Medical reports and/or medical narratives, medical records, including patient's records cards, x-rays, x-ray readings and reports, laboratory records and reports, all tests of any type or character and reports thereof, statements of charges, and any and all of my records pertaining to any and all medical care, history, condition, treatment, diagnosis, prognosis, etiology, or expense.

You are further authorized and directed to furnish oral and written reports and/or narratives to [Name of person's SPOUSE making the will] on any of the foregoing matters.

You are requested to treat the above information as confidential.

Date: **LegalFormsForTexas.Com**

**PREVIEW**  
[Name of person making the will]

Witness

State of Texas

County of [County where the probate will be filed]

This instrument was acknowledged before me on \_\_\_\_\_ by [Name of person making the will].

**PLEASE DO NOT COPY**  
Signature of officer

Notary's typed or printed name

My commission expires:

or Notary's Stamp

**THIS DOCUMENT**

**THANK YOU**

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# PREVIEW

Attorneys At Law, a Partnership of Professional Corporations  
Colonnade I Building

9901 IH 10 West, Suite 800  
San Antonio, Texas 78230

Phone (210) 690-9944 ♦ Fax (210) 690-3635 ♦ e-mail: [LeeStevenson@att.net](mailto:LeeStevenson@att.net)

Wednesday, May 16, 2007

**ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND  
ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION**

[Name of person making the will]  
[Address for the person making the will]

# PLEASE DO NOT COPY

**LIVING WILLS ALSO KNOWN AS DIRECTIVES TO PHYSICIANS  
DURABLE POWERS OF ATTORNEY FOR HEALTH CARE PURPOSES,  
HOSPICES & ORGAN DONATIONS**

Dear [Salutation for the Name of person making the will]:

This letter is intended to help you understand the terms and concepts behind Durable powers of attorney, Living Wills and Directives to Physicians.

## THIS DOCUMENT

If you do not wish to have your life sustained or prolonged by the use of artificial means, you may choose to sign a living will or a document which is frequently referred to as a directive to physician.

1. A living will notifies the decedent's attending physician of the fact that the patient does not desire \*\*\*his or her\*\*\* life to be artificially prolonged under the circumstances enumerated in the form. The document allows your doctor to withdraw or withhold life sustaining medical procedures. The living will must follow a strict legal form which your physician or lawyer can help you prepare.

2. If an adult patient is totally incapacitated, chapter 113 of the Health and Safety Code enumerates persons who can consent to medical treatment. In order of priority:

- a. spouse
- b. adult children
- c. parents and

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d. persons designated by the patient

**PREVIEW**

3. The question of artificial prolongation of a person's life is a controversial and developing area; however, clients may, from time to time, desire to put their beliefs on record and give the same to their physician.

4. The following assumptions are made in most living will forms:

a. The person has an incurable condition which is designated as such by two physicians.

b. The application of life-sustaining procedures would only prolong the moment of death

c. The person desires that this directive be given to and honored by family members and physicians.

d. If the person is diagnosed as pregnant, then the directive will have no force during the term of the pregnancy.

e. The directive has no force or effect five years from the date of the execution of the directive.

Physicians are legally bound to honor the living will or to help you find a doctor or health care provider who will honor the living will. If you decide that you want to cancel a living will you may do so if you change your mind.

**THIS DOCUMENT**

You should inform your doctor that you have canceled your living will and you should tear up or destroy all known existing living wills so the health care provider will not mistakenly assume that you still desire to have life sustaining medical treatment withheld from you.

Some health care providers and institutions have special procedures regarding withholding life saving measures. For instance they may place a note in your medical records which instructs the staff not to dispatch a resuscitation team to a dying patient's bedside.

#### WHAT IS A DURABLE POWER OF ATTORNEY ?

**THANK YOU**

Powers of attorney may be used to appoint an agent to manage your property or financial affairs. A power of attorney that lasts while you are incapacitated is known as a durable power of attorney because non durable ones, expire when you, the principal become incapacitated. A durable power of attorney may also be used to allow an agent to make important health care decisions for you if you become incapacitated.

Durable powers of attorney for property management focus on property and financial management decisions. They may become ineffective when the principal becomes incapacitated. A durable power

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of attorney for health care purposes, allows an agent to make health care decisions for the principal when the principal is incapacitated.

**PREVIEW**

For durable powers of attorney for health care purposes, the document is and decisions which may be made thereunder are not restricted just to life and death decisions. The power of attorney permits your agent (attorney) to make any health care decisions on your behalf if you are incapable of making them.

A durable power of attorney is usually given to a spouse, close friend, or relative. The close friend or relative can then act as your agent in instructing your health care providers as to your medical treatment.

Your doctor or health care provider must certify in writing that based on reasonable medical judgment, you lack the capacity to make a health care decision. The agent can then make the decision according to ~~his or her~~ own knowledge of your wishes including religious and moral beliefs.

**PLEASE DO NOT COPY**

The person that you give your power of attorney to should be someone you know and trust and is familiar with your wishes and is willing to accept the responsibility of making the decisions for you if you are incapacitated.

A living will allows a person to die naturally and instructs health care providers to withhold life sustaining medical treatment or procedures. A durable power of attorney allows a spouse, close friend, or relative to make health care decisions for you in the event you are incapable of making such decisions. Obviously a durable power of attorney is a much broader and more inclusive document.

**THIS DOCUMENT**

The Texas legislature has made numerous changes to Texas law pertaining to durable powers of attorney. The law now contains the Uniform Durable Power of Attorney Act, while the Texas Civil Practice and Remedies Code contains provisions pertaining to Durable Powers of Attorney for Health Care.

The Uniform Durable Power of Attorney Act includes a statutory form of a Durable Power of Attorney. By providing such a standard form, banks, lenders, financial institutions and third parties may accept a durable power of attorney without the reservations that they have had with non standard powers of attorney in the past. As an incentive to promote acceptance of the statutory power of attorney, the law limits the liability of agents and third parties who act under a belief that a person has not revoked the statutory power of attorney.

**THANK YOU**

However, the statutory durable power of attorney is permissive rather than exclusive. The Texas probate code validates existing and new powers of attorney that are not in the same form as the statutory durable power of attorney. Accordingly, attorneys may continue to use their previous power of attorney forms. This chapter contains both a long form and a statutory durable Power of Attorney.

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The power of attorney is revoked by filing a revocation form in the county clerks office where the principal resides or by the death of the principal or upon the appointment and qualification of a guardian of the principal's estate.

One of the benefits of the durable power of attorney created under the Texas probate code is that a power of attorney may become effective upon the occurrence of an even stated in the power of attorney. A durable power of attorney may become effective only upon the incapacity of the principal. The obvious intent is that powers of attorney may be prepared in advance prior to the need for a power of attorney. Some clients may be reluctant to sign a power of attorney unless the power of attorney becomes effective only in the event of \*\*\*his or her\*\*\* incapacity.

The statutory form does not define the event that triggers the effectiveness of the power of attorney i.e. the principal's incapacity, consequently language may be added to the document which defines or states how the incapacity may be determined. Typically, incapacity may be determined by two licensed physicians or some other procedure to determine if incapacity has occurred.

The statutory durable power of attorney allows for the addition of powers which are not already stated in the form. This could include but is not limited to the power to make gifts of property, the power to create trusts, or any other power not stated in the statutory form.

An attorney in fact can act for a principal during any period of disability or incapacity until a guardian is appointed by a court. Persons who deal with the attorney are protected until they receive a notice of revocation of the power of attorney.

The document no longer has to be recorded, except in real estate related transactions (or if it is intended to transfer real estate). The law has been changed so that witnesses are no longer needed.

The statutory form states that :

- a. It is governed by the probate code,
- b. That anyone having questions should get legal advice,
- c. That it does not authorize the agent to make health care decisions,
- d. That it may be revoked,
- e. It names an agent,
- f. It names the principal,
- g. Lists thirteen powers and instructs the principal to mark in if some of those powers should not be granted,
- h. The form contains blank lines for special instructions limiting or extending the agent's powers, statement that the power of attorney becomes effective upon disability or incapacity,
  - i. The form cites that a third party receiving the document may act under it,
  - j. The revocation is not effective as to third parties until they have learned of the revocation,
  - k. The form provides for a place for a successory agent to be named

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The statutory form permits you to give your agent limited gift-giving powers by placing your initials by the appropriate sentence on the form. This gift-giving provision in the statutory form only applies if it is initialed. The gift-giving provision in the statutory form limits gifts to any one person in any calendar year to the statutory annual gift amount.

You should consider giving your agent the power to create a trust and/or make transfers to a trust. While this power is not included in the statutory form, it can be quite helpful if you are faced with a long-term disability. If you do not wish for one or more of these additional powers to be included, you must cross through it and initial it when you sign the power of attorney.

The gift-giving power gives your agent the authority to make gifts to himself or herself (if your agent is a beneficiary under your will or one of your heirs under Texas law). This gift-giving authority may help your family save taxes, but you may be uncomfortable giving your agent this much power. If you have any questions about these powers, please consult us.

The probate code deals with the instruction of the power of attorney. The code allows the power of attorney to refer to real property and it is not required to refer to any specific property, i.e. the current legal description of the principal's real property.

The probate code allows the power of attorney to handle the following types of property: tangible personal property, stocks, bonds, commodities, banking and financial transactions, business operating transactions, insurance, estate, trust and other beneficiary transactions, claims and litigation, personal and family maintenance benefits from governmental programs or civil military service, retirement plan transactions and tax matters.

The validity of a power of attorney as meeting the requirements of a statutory durable power of attorney is not affected by the fact that one or more of the categories of optional powers listed in the form are struck or the form includes specific limitations on or additions to the attorney in fact's or agent's powers.

When a power in substantially the form set forth in this chapter is used, third parties who rely in good faith on the acts of the agent within the scope of the power may do so without fear of liability to the principal. The following form is not exclusive, and other forms of power of attorney may be used.

#### ORGAN DONATIONS

You may designate parts of your body to be donated for use by other patients. Many hospitals are now equipped to accept various body parts and organs for transplant operations. The back of your Texas Driver's License has a place for you to sign if you desire to donate body organs. Hospitals or physicians also have a form that you may sign to do the same thing.

#### HOSPICE CARE

If a patient is terminally ill, he or she may desire hospice care. The program provides medical and support services including counseling and pain control for management of a

terminal illness. Programs are designed to care for the patient in their own home. Some programs provide for care in residential settings other than hospitals such as in nursing homes. Medicare may pay for some hospice care.

**PREVIEW**

**This letter is intended as a general introduction into the area. The reader is advised that elder care, Medicare/Medicaid, is becoming an increasingly complex area subject to rapid & complex changes.**

If you have any questions concerning durable powers of attorney, wills, trusts or probate, please call me.

Sincerely,

**PLEASE DO NOT COPY**



---

S. Lee Stevenson, Jr.

**THIS DOCUMENT**

**THANK YOU**

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**DIRECTIVE TO PHYSICIANS OR LIVING WILL**  
**PREVIEW**  
**INSTRUCTIONS FOR COMPLETING THIS DOCUMENT:**

This is an important legal document known as a Directive to Physicians or Living Will. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury.

These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician.

Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive.

Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

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INSTRUCTIONS  
**PREVIEW**

The Declarant must sign the directive in the presence of two witnesses, and those witnesses must sign the directive.

A witness may not be:

- (1) a person designated by the Declarant to make a treatment decision;
- (2) a person related to the Declarant by blood or marriage;
- (3) a person entitled to any part of the Declarant's estate after the Declarant's death under a will or codicil executed by the Declarant or by operation of law;
- (4) the attending physician;
- (5) an employee of the attending physician;
- (6) an employee of a health care facility in which the Declarant is a patient if the employee is providing direct patient care to the Declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time the written directive is executed or if the directive is a non written directive issued under Section 672.005 HEALTH & SAFETY at the time the nonwritten directive is issued, has a claim against any part of the Declarant's estate after the Declarant's death.

A Declarant may include in a directive directions other than those provided by Section 672.004 HEALTH & SAFETY and may designate in a directive a person to make a treatment decision for the Declarant in the event the Declarant becomes comatose, incompetent, or otherwise mentally or physically incapable of communication.

A Declarant shall notify the attending physician of the existence of a written directive. If the Declarant is comatose, incompetent, or otherwise mentally or physically incapable of communication, another person may notify the attending physician of the existence of the written directive. The attending physician shall make the directive a part of the Declarant's medical record.

**THANK YOU**

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DEFINITIONS:

# PREVIEW

Artificial nutrition and hydration means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

Physician means a physician licensed by the Texas State Board of Medical Examiners or a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

# PLEASE DO NOT COPY

Attending physician means the physician who has primary responsibility for a patient's treatment and care.

Competent means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

Incompetent means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

# THIS DOCUMENT

Irreversible condition" means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions for the person's own self;

and

# THANK YOU

(3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

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**Explanation:** Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on.

There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments.

Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die.

You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome.

This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition.

The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

Terminal condition means an incurable condition, or irreversible condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

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**Explanation:** Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced.

**PREVIEW**

In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

**PLEASE DO NOT COPY**

**THIS DOCUMENT**

**THANK YOU**

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**DIRECTIVE TO PHYSICIANS OR LIVING WILL**

**PREVIEW**

I [Name of person making the will], being of sound mind, willfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth in this directive.

I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

I [Name of person making the will], recognize that the best health care is based upon a partnership of trust and communication with my physician.

**PLEASE DO NOT COPY**

My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known.

If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

**THIS DOCUMENT**

I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible;

**OR**

I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE)

**THANK YOU**

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment, I hereby request that I be kept alive in this terminal condition using available life-sustaining treatment in accordance with prevailing standards of care.

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\_\_\_\_ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible;

**PREVIEW**

**OR**

\_\_\_\_ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. **(THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)**

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc.)

**PLEASE DO NOT COPY**

Be sure to state whether you do or do not want the particular treatment.)

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After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

**THIS DOCUMENT**

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make treatment decisions with my physician compatible with my personal values:

1. [Name of person's SPOUSE making the will]
2. [Name of FIRST INDEPENDENT EXECUTOR]
3. [Name of SECOND INDEPENDENT EXECUTOR]

**THANK YOU**

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

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If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas.

If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort.

I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant.

This directive will remain in effect until I revoke it. No other person may do so.

It is my intention that this directive be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from that refusal.

If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive has no effect during my pregnancy.

Conflict With Natural Death Act Or Durable Power Of Attorney For Health Care

To the extent that an out-of-hospital Do Not Resituate order conflicts with a directive or treatment decision executed or issued under Chapter 672 or a durable power of attorney for health care executed or issued in accordance with Chapter 135, Civil Practice and Remedies Code, the instrument executed later in time controls.

Signed on \_\_\_\_\_.

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[Name of person making the will]  
[Address for the person making the will]  
**PREVIEW**

**ATTESTATION:**

Two competent adult witnesses must sign below, acknowledging the signature of the Declarant.

I am not a person designated by the Declarant to make a treatment decision.

I am not related to the Declarant by blood or marriage.

**PLEASE DO NOT COPY**  
I would not be entitled to any portion of the Declarant's estate on the Declarant's death.

I am not the attending physician of the Declarant or an employee of the attending physician.

I have no claim against any portion of the Declarant's estate on the Declarant's death.

Furthermore, if I am an employee of a health care facility in which the Declarant is a patient, I am not involved in providing direct patient care to the Declarant and am not an officer, director, partner, or business officer, employee of the health care facility or of any parent organization of the health care facility.

**THIS DOCUMENT**

Date: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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**THANK YOU**

Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

**PREVIEW**

**PLEASE DO NOT COPY**

**THIS DOCUMENT**

**THANK YOU**

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INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY

**PREVIEW**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

A medical power of attorney is not effective unless the principal, before executing the medical power of attorney, signs a statement that the principal has received a disclosure statement and has read and understood its contents.

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself.

Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you.

**THIS DOCUMENT**

Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment.

Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

**THANK YOU**

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had

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It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions.

You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment is to use the provisions of the

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This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

**PREVIEW**

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS**

**IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.**

**PLEASE DO NOT COPY**  
**THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:**

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

**THIS DOCUMENT**

**THANK YOU**

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# PREVIEW

Attorneys at Law, Partnership of Professional Corporations

Colonnade I Building

9901 IH 10 West, Suite 800

San Antonio, Texas 78230

Phone (210) 690-9944 ♦ Fax (210) 690-3635 ♦ e-mail: [LeeStevenson@att.net](mailto:LeeStevenson@att.net)

Wednesday, May 16, 2007

## ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION

[Name of person making the will]

[Address for the person making the will]

# PLEASE DO NOT COPY

INFORMATION ON

**DURABLE POWER OF ATTORNEYS FOR HEALTH CARE**

Dear [Salutation for the Name of person making the will]:

This letter is designed to explain some important concepts about the use of a durable power of attorney for health care purposes.

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself.

# THIS DOCUMENT

Because health care means any treatment, service, or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment.

Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psycho-surgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when you do not certify that you lack the capacity to make mental health care decisions.

# THANK YOU

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care that you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it. Be sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is

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knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

**PREVIEW**

The person you appoint should be someone you know and trust. The person must be 18 years of age or older, or be a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g. your physician or any employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should tell the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each person a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

**PLEASE DO NOT COPY**

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so. Treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider.

If you have any questions concerning durable powers of attorney, wills, trusts or probate, please call me.

Sincerely,

**THIS DOCUMENT**



---

S. Lee Stevenson, Jr.

**THANK YOU**

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STATUTORY DURABLE POWER OF ATTORNEY

# PREVIEW

**NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER IX, TEXAS PROBATE CODE.**

**IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU.**

**YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.**

# PLEASE DO NOT COPY

I, [Name of person making the will] of [Address for the person making the will], [County where the probate will be filed], County, Texas, appoint [Name of person's SPOUSE making the will] of [Address for the person making the will] [County where the probate will be filed] County, Texas, as my agent (attorney in fact) to act for me in any lawful way with respect to all of the following powers, except for a power, if any, that I have crossed out below.

**TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.**

Real property transactions;

Tangible personal property transactions;

Stock and bond transactions;

Commodity and option transactions;

Banking and other financial institution transactions;

Business operating transactions;

Insurance and annuity transactions;

Estate, trust, and other beneficiary transactions;

Claims and litigation;

Personal and family maintenance;

Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military services.

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# THIS DOCUMENT

# THANK YOU

Retirement plan transactions:

Tax matters.

# PREVIEW

**IF NO POWER LISTED IN ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.**

### SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts:

**PLEASE DO NOT COPY**  
(INITIAL IN FRONT OF THE APPROPRIATE SENTENCE TO HAVE IT APPLY):

\_\_\_\_\_ Gift-Giving Power. My agent shall have the power to make gifts.

\_\_\_\_\_ Gift-Giving Power Limited to Gift Tax Exclusion. I grant my agent the power to apply my property to make gifts, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

### THE FOLLOWING CONSTITUTE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO MY AGENT:

My agent shall have the power and authority to create a trust for my benefit, naming my agent or any other person as trustee or, if my agent so chooses, naming a bank or trust company with assets under management of \$100 million or more as trustee, which trust may also benefit my spouse, if any, and descendants, if any, and to transfer all or any part of my property or estate to the trust so created or to any existing trust of which I am a settler, a beneficiary, or both, even though my agent may be the trustee.

In addition to (and not in limitation of the powers granted above) I empower my agent to substitute one or more agent or agents under my attorney-in-fact or agent, in or concerning the premises or any part thereof, by written instrument, to act for and in place of my agent, and to revoke such substitution at the pleasure of my agent.

Although this instrument contains modifications of the statutory durable power of attorney form found in Tex. Prob. Code Ann. § 490, I intend for it to be a "statutory durable power of attorney" as provided in that section and to be construed as such.

**UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.**

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

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# PREVIEW

\_\_\_\_\_ (A) This power of attorney becomes effective immediately, as of the date that it is signed and it is not affected by my subsequent disability or incapacity.

\_\_\_\_\_ (B) This power of attorney becomes effective upon my disability or incapacity.

**YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.**

**IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).**

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

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## REVOCATION OF PREVIOUS POWERS OF ATTORNEY

I hereby revoke all previous statutory durable powers of attorney which are inconsistent with the terms of this document. However, I do not revoke other powers of attorneys including other agency-type arrangements not governed by either of such statutes, including but not limited to durable powers of attorney for health care, directives to physicians, multi-party account agreements at financial institutions.

**THIS DOCUMENT**

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

A sample of the signature of my agent is as follows:

**THANK YOU**

[Name of person's SPOUSE making the will]

[Address for the person making the will]

[Name of person's SPOUSE TELEPHONE NUMBER making the will]

## SUCCESSOR AGENTS

If any agent named herein dies, becomes legally disabled, resigns, or refuses to execute the following (each to act alone and successively, in the order named) as successor(s) to that agent:

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**FIRST ALTERNATE OR SUCCESSOR AGENT**

\_\_\_\_\_  
[Name of FIRST INDEPENDENT EXECUTOR]  
[Address of FIRST INDEPENDENT EXECUTOR]  
[Telephone number for the FIRST INDEPENDENT EXECUTOR]

**SECOND ALTERNATE OR SUCCESSOR AGENT**

\_\_\_\_\_  
[Name of SECOND INDEPENDENT EXECUTOR]  
[Address of SECOND INDEPENDENT EXECUTOR]  
[Telephone number for the SECOND INDEPENDENT EXECUTOR]

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**THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.**

My agent shall not be liable for any act or omission to act hereunder except same as shall be shown to have been fraud, dishonesty or willful misconduct.

I agree to indemnify my agent against, and hold such person (or persons) harmless from, any claim, losses, liabilities, causes of action, judgments, court costs and expenses (including reasonable attorney's fees) incurred by or asserted against my agent arising out of, resulting from or in connection with any act or omission to act hereunder except such act or omission to act which is determined to be fraud, dishonesty or willful misconduct.

**THE FOREGOING PROVISION RELIEVES MY AGENT FROM LIABILITY FOR NEGLIGENCE (BOTH ORDINARY AND GROSS NEGLIGENCE) AND ERRORS OF BUSINESS JUDGMENT.**

Signed on \_\_\_\_\_

\_\_\_\_\_  
[Name of person making the will]  
[Address for the person making the will]

**THANK YOU**

State of Texas  
County of [County where the probate will be filed],

Subscribed and sworn to before me by [Name of person making the will] and by the witnesses \_\_\_\_\_ and \_\_\_\_\_, on \_\_\_\_\_.

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Notary Public, State of Texas  
**PREVIEW**

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

My commission expires: \_\_\_\_\_

[or Notary's Stamp]

**AFTER RECORDING RETURN TO:**

S. Lee Stevenson, Jr.

Stevenson & Ricker

Attorneys at Law

9901 IH 10 West # 800

San Antonio, TX 78230

(210) 884-3454.

**PLEASE DO NOT COPY**

**THIS DOCUMENT**

**THANK YOU**

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**Non-statutory durable power of attorney for property management (longer form)**

# PREVIEW

1. This form may be used to allow the testator or testatrix's property to be managed without a guardianship in the event the testator or testatrix becomes incapacitated. It is longer and more comprehensive than the statutory durable power of attorney.
2. This form allows the testator or testatrix to appoint an agent to manage \*\*\*his or her\*\*\* property in the event the testator or testatrix becomes incapacitated. A durable power of attorney differs from a conventional power of attorney in that conventional powers expire when the principal (the testator or testatrix) becomes incapacitated. A durable power becomes effective if and when the principal becomes incapacitated.
3. **PLEASE DO NOT COPY** An attorney-in-fact can act for a principal during any period of disability or incapacity until a guardian is appointed by a court. Persons who deal with the attorney are protected until they receive a notice of revocation of the power of attorney.
4. The document no longer has to be recorded, except in real estate related transactions ( or if it is intended to transfer real estate). The law has been changed so that the document no longer has to be recorded, witness are no longer needed.

## THIS DOCUMENT

## THANK YOU

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**DURABLE POWER OF ATTORNEY  
FOR PROPERTY MANAGEMENT  
PREVIEW**

I, [Name of person making the will] of [Address for the person making the will], [County where the probate will be filed] County, Texas, appoint, [Name of person's SPOUSE making the will] [Address for the person making the will], to serve as my true and lawful attorney-in-fact, to act, manage and conduct all of my affairs, in my name, place, and stead, and for my use and benefit, as I, myself, might act if personally present and acting.

In the event that [Name of person's SPOUSE making the will] dies, becomes legally disabled, resigns, refuses to act or is unable to serve for any reason, I make, constitute, and appoint [Name of FIRST INDEPENDENT EXECUTOR] of [Address of FIRST INDEPENDENT EXECUTOR] as my true and lawful attorney-in-fact to act for me in my name, place and stead.

If for any reason [Name of FIRST INDEPENDENT EXECUTOR] ceases to act or is unable to serve, I appoint [Name of SECOND INDEPENDENT EXECUTOR] of [Address of SECOND INDEPENDENT EXECUTOR] as my true and lawful attorney-in-fact.

In signing this Power of Attorney, I revoke all inconsistent Powers of Attorney which I may have executed.

**1. EFFECTIVE DATE**

1.1 This Durable General Power of Attorney shall become effective as of the date of a written statement from a licensed physician attesting to my incapacity and inability to make financial decisions for myself or as of the date of a written statement signed by me and notarized that I want this Power of Attorney to become effective for the time period specified. This written statement by a licensed physician or by myself shall be attached to the original document of this Durable General Power of Attorney. This document shall continue in full force and effect during my incapacity.

**2. GENERAL POWERS OF ATTORNEY-IN-FACT**

2.1 I appoint my attorney-in-fact to act for me in any lawful way with respect to the following classes of transactions and give said person, in addition to specific powers named, all powers customarily afforded an attorney-in-fact in each class of transactions:

- (a) real property transactions;
- (b) tangible personal property transactions;
- (c) stock and bond transactions;
- (d) commodity and option transactions;
- (e) banking and other financial institution transactions;

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(f) business operating transactions;

(g) insurance and annuity transactions;

(h) estate, trust, and other beneficiary transactions;

(i) claims and litigation;

(j) personal and family maintenance;

(k) benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;

(l) retirement plan transactions;

(m) tax matters.

With respect to each of the classes of transactions listed above, I give my attorney-in-fact the power to:

2.2 Demand, receive, and obtain by litigation, action, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled.

2.3 Conserve, invest, disburse, or use any money or other thing of value received on behalf of the principal for the purposes intended.

2.4 Contract in any manner with any person, on terms agreeable to the attorney-in-fact, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal.

2.5 Sign, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the attorney-in-fact considers desirable to accomplish a purpose of a transaction.

2.6 Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in an action or litigation relating to the claim.

2.7 Seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney.

2.8 Engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant.

2.9 Keep appropriate records of all transactions, including an accounting of receipts and disbursements.

**PREVIEW**

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2.10 Prepare, sign, and file a record, report, or other document the attorney-in-fact considers necessary or desirable to safeguard or promote the principal's interest under a statute or governmental regulation.

2.11 Reimburse the attorney-in-fact for expenditures made in exercising the powers granted by this Durable Power of Attorney.

2.12 In general, do any other lawful act that the principal may do with respect to a transaction.

### 3. REAL PROPERTY TRANSACTIONS

3.1 My attorney-in-fact without reference to a specific description of the applicable real property is empowered to

(a) Accept as a gift or as security for a loan or reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property.

(b) Sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition, consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property.

(c) Release, assign, satisfy, and enforce by litigation, action, or otherwise a mortgage, deed of trust, encumbrance, lien, or other claim of real property that exists or is claimed to exist.

(d) Do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including power to:

(i) insure against a casualty, liability, or loss;

(ii) obtain or regain possession or protect the interest or right by litigation, action, or otherwise;

(iii) pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with them; and

(iv) purchase supplies, hire assistance or labor, or make repairs or alterations in the real property.

3.2 Use, develop, alter, replace, remove, erect, or install structures or other improvements on real property in which the principal has or claims to have an estate, interest, or right.

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3.3 Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property, receive and hold shares of stock or obligations received in a plan or reorganization, and act with respect to the shares or obligations, including:

- (a) selling or otherwise disposing of the shares or obligations;
- (b) exercising or selling an option, conversion, or similar right with respect to the shares or obligations; and
- (c) voting the shares or obligations in person or by proxy.

3.4 Change the form of title of an interest in or right incident to real property.

3.5 Mediate encumbrances on real property in which the principal has or claims to have an interest to public use, with or without consideration.

#### 4. TANGIBLE PERSONAL PROPERTY TRANSACTIONS

My attorney-in-fact without further reference is empowered to:

4.1 Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property.

4.2 Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease or sublet to others, or otherwise dispose of tangible personal property or an interest in tangible personal property.

4.3 Release, assign, satisfy, or enforce by litigation, action, or otherwise a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property.

4.4 Do any act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

- (a) insuring against a casualty, liability, or loss;
- (b) obtaining or regaining possession or protecting the property or interest by litigation, action, or otherwise;
- (c) paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes and assessments;

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- (e) storing for hire or on a gratuitous bailment; and
- (f) using, altering, and making repairs or alterations.

## 5. STOCK AND BOND TRANSACTIONS

5.1 My attorney-in-fact without further reference is empowered to buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments other than commodity futures contracts and call and put options on stocks and stock indexes, receive certificates and other evidences of ownership with respect to securities, exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

## 6. COMMODITY AND OPTION TRANSACTIONS

6.1 My attorney-in-fact without further reference is empowered to buy, sell, exchange, assign, settle and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated options exchange and establish, continue, modify, or terminate option accounts with a broker.

## 7. BANKING AND OTHER FINANCIAL INSTITUTION TRANSACTIONS

7.1 My attorney-in-fact without further reference is empowered to:

- (a) Continue, modify, or terminate an account or other banking arrangement made by or on behalf of the principal.
- (b) Establish, modify, or terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the attorney-in-fact.
- (c) Hire a safe deposit box or space in a vault.
- (d) Contract to procure other services available from a financial institution as the attorney-in-fact considers desirable.
- (e) Withdraw by check, order, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution.
- (f) Receive bank statements, vouchers, notices, or similar documents from a financial institution and act with respect to them.
- (g) Enter a safe deposit box or vault and withdraw or add to the contents.

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(h) Borrow money at an interest rate agreeable to the attorney-in-fact or agent and pledge as security real or personal property of the principal necessary to borrow, pay, renew, or extend the time of payment of a debt of the principal, when due.

(i) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order, to receive the cash or other proceeds of those transactions, to accept a draft drawn by a person on the principal, and to pay the principal when due.

(j) Receive for the principal and act on a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument.

(k) Apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit.

(l) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

## 8. BUSINESS OPERATING TRANSACTIONS

8.1 My attorney-in-fact without further reference is empowered to:

(a) Operate, buy, sell, enlarge, reduce or terminate a business interest.

(b) To the extent that an agent is permitted by law to act for a principal and subject to the terms of any applicable partnership agreement

(i) perform a duty or discharge a liability or exercise a right, power, privilege, or option that the principal has, may have, or claims to have under a partnership agreement, whether or not the principal is a general or limited partner;

(ii) enforce the terms of a partnership agreement by litigation, action, or otherwise; and

(iii) defend, submit to arbitration, settle, or compromise litigation or an action to which the principal is a party because of membership in the partnership.

(c) Exercise in person or by proxy, or enforce by litigation, action, or otherwise a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share or other instrument of similar character and defend, submit to arbitration, settle, or compromise a legal proceeding to which the principal is a party because of a bond, share, or similar instrument.

(d) With respect to a business owned solely by the principal:

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(i) continue, modify, renegotiate, extend, and terminate a contract made with an individual or legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before signing of this Power of Attorney;

(ii) determine the location of its operation, the nature and extent of its business; the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation; the amount and types of insurance carried; and the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees; change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of business; and demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business and control and disburse the money in the operation of the business.

(e) Put additional capital into a business in which the principal has an interest.

(f) Join in a plan of reorganization, consolidation or merger of the business.

(g) Sell or liquidate a business or part of it at the time and on the terms that the attorney-in-fact or agent considers desirable.

(h) Establish the value of a business under a buy-out agreement to which the principal is a party.

(i) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business that is required by a governmental agency, department, or instrumentality or that the attorney-in-fact or agent considers desirable and make related payments.

(j) Pay, compromise, or contest taxes or assessments and do any other act that the attorney-in-fact or agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

## 9. INSURANCE TRANSACTIONS

9.1 My attorney-in-fact without further reference is empowered to:

(a) Continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract.

(b) Procure new, different, or additional contracts of insurance and annuities for the principal or the principal's spouse, children, and other dependents and select the amount, type of insurance or annuity, and mode of payment.

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(c) Pay the premium or assessment on or modify, rescind, release or terminate a contract of insurance procured by the attorney-in-fact.

**PREVIEW**

(d) Designate the beneficiary of the contract, except that an attorney-in-fact or agent may be named a beneficiary of the contract or an extension, renewal, or substitute for the contract only to the extent the attorney-in-fact or agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney.

(d) Apply for and receive a loan on the security of the contract of insurance or annuity.

(e) Surrender and receive the cash surrender value.

(f) Exercise an election.

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(g) Change the manner of paying premiums.

(h) Change or convert the type of insurance contract or annuity with respect to which the principal has or claims to have a power described in this Paragraph.

(i) Change the beneficiary of a contract of insurance or annuity, except that the attorney-in-fact may be designated a beneficiary only to the extent authorized by 9.04 of this Paragraph.

(j) Apply for and procure governmental aid to guarantee or pay premiums of a contract of insurance or annuity.

**THIS DOCUMENT**

(k) Collect, sell, assign, hypothecate, borrow on, or pledge the interest of the principal in a contract of insurance or annuity.

(l) Pay from the proceeds or otherwise, compromise, or contest, or apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing because of the tax or assessment.

## 10. ESTATE, TRUST AND OTHER BENEFICIARY TRANSACTIONS

10.1 My attorney-in-fact without further reference is empowered to act for the principal in all matters that affect a trust, probate, estate, guardianship, Conservatorship, escrow, custodianship or other fund from which the principal may receive, or claims to be entitled as a beneficiary to a share in payment including to:

**THANK YOU**

(a) Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund.

(b) Demand or obtain by litigation, action, or otherwise money or any other thing of value to which the principal, or any persons or claims to be entitled because of the fund.

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(c) Initiate, participate in, or oppose a legal or judicial proceeding to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal.

(d) Initiate, participate in, or oppose a legal or judicial proceeding to remove, substitute, or surcharge a fiduciary.

(e) Conserve, invest, disburse, or use anything received for an authorized purpose.

(f) Transfer all or part of an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.

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11.1 My attorney-in-fact without further reference is empowered to:

(a) Assert and prosecute before a court or administrative agency a claim, a claim for relief, a counterclaim, or an offset or defend against an individual, a legal entity, or a government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief.

(b) Bring an action to determine adverse claims, intervene in an action or litigation, and act as amicus curiae.

(c) In connection with an action or litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree.

(d) In connection with an action or litigation, perform any lawful act the principal could perform, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding of the principal in litigation.

(e) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation.

(f) Waive the issuance and service of process on the principal, accept service of process directed to the principal which may be served on the principal, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, or receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

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(g) Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, with respect to a reorganization proceeding or a receivership or application for the appointment of a receiver or trustee that affects an interest of the principal in real or personal property or other thing of value.

(h) Pay a judgment against the principal or a settlement made in connection with a claim or litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

## 12. FAMILY AND PERSONAL MAINTENANCE

12.1 My attorney-in-fact without further reference is empowered to:

(a) Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse and children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals.

(b) Provide for the individuals described in 12.01 of this Paragraph normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, and other current living costs.

(c) Pay for necessary medical, dental, and surgical care, hospitalization, and custodial care for the individuals described by 12.01 of this Paragraph.

(d) Continue any provision made by the principal, for the individuals described by 12.01 of this Paragraph for automobiles or other means of transportation, including registering, licensing, insuring, and replacing the automobiles or other means of transportation.

(e) Maintain or open charge accounts for the convenience of the individuals described by 12.01 of this Paragraph and open new accounts the attorney-in-fact considers desirable to accomplish a lawful purpose.

(f) Continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or to continue contributions to those organizations.

## 13. BENEFITS FROM CERTAIN GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE

13.1 My attorney-in-fact without further reference is empowered with reference to benefits from Social Security, Medicare, Medicaid or other governmental programs or civil or military service to:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable to the United States, a foreign government, or a state or subdivision of a state to the

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principal, including allowances and reimbursements for transportation of the individuals described by Section 12.01 above, and to shipment of their personal effects.

**PREVIEW**

(b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.

(c) Prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled under a statute or governmental regulation.

(d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive.

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(e) Receive the financial proceeds of a claim of the type described in this Paragraph and conserve, invest, disburse, or use anything received for a lawful purpose.

#### 14. RETIREMENT PLANS

14.1 My attorney-in-fact without further reference is empowered to:

(a) Apply for service or disability retirement benefits.

(b) Select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals.

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(c) Designate or change the designation of a beneficiary or benefits payable by a retirement plan, except that an attorney-in-fact may be named a beneficiary only to the extent the attorney-in-fact was a named beneficiary under the retirement plan before this Durable Power of Attorney was signed.

(c) Make voluntary contributions to retirement plans if authorized by the plan.

(d) Exercise the investment powers available under any self-directed retirement plan.

(e) Make "rollovers" of plan benefits into other retirement plans.

(f) Borrow from, sell assets to, and purchase assets from retirement plans if authorized by the plan.

(g) Waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

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(h) Receive, collect, and cash payments from a retirement plan.

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(i) Waive the right of the principal to receive all or a portion of benefits payable by a retirement plan.

(j) Request and receive information relating to the principal from retirement plan records.

## 15. TAX MATTERS

15.1 My attorney-in-fact without further reference is empowered to:

(a) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax related documents, including receipts, offers, waivers, consents, including consents and agreements under the Internal Revenue Code closing agreements, and any power of attorney form required by the Internal Revenue Service or other taxing authority with respect to a tax year on which the statute of limitations has not run and 25 tax years following that tax year.

(b) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority.

(c) Exercise any election available to the principal under federal, state, local, or foreign tax law.

(d) Act for the principal in all matters for all periods before the Internal Revenue Service and any other taxing authority.

## 16. GENERAL POWER

16.1 This document is to be construed and interpreted as a general Power of Attorney. The enumeration of specific powers set out in this document does not and is not intended in any way to limit the more general statement of the power granted, but is intended to be in addition thereto and by way of example thereof.

## 17. RATIFICATION

17.1 I ratify and confirm all that my attorney-in-fact, or \*\*\*his or her\*\*\* successors, shall lawfully do or cause to be done by virtue of this Power of Attorney and rights and powers granted herein. I indemnify and hold harmless any third party who accepts and acts under this Power of Attorney against any and all claims, demands, losses, damages, actions and causes of action, including expenses, costs and reasonable attorneys' fees which such third party may incur in connection with his, her or its reliance on this Power of Attorney.

17.2 I bind myself to indemnify and hold harmless my attorney-in-fact and any successor who shall so act against any and all claims, demands, losses, damages, actions and causes of action, including expenses, costs and reasonable attorneys' fees which my attorney-in-fact at any time may

sustain or incur in connection with ~~\*\*\*his or her\*\*\*~~ carrying out the lawful authority granted him or her in this Power of Attorney.

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## 18. PROPER ENDORSEMENT

18.1 Any act or thing lawfully done hereunder by my said attorney-in-fact shall be binding on myself and my heirs, legal and personal representatives, and assigns, provided, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney-in-fact for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "Attorney-in-Fact".

## 19. TERMINATION

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19.1 This Power of Attorney shall not terminate on my future disability or incompetency. It shall only terminate by one or more of the following circumstances:

- (a) My death;
- (b) The death of my attorney-in-fact and all successors as named in this document; or
- (c) Written revocation by me delivered to my attorney-in-fact.

19.2 My death shall not revoke or terminate this agency as to the attorney-in-fact, or other person who, without actual knowledge of my death, acts in good faith under this Power of Attorney. Any action so taken unless otherwise invalid or unenforceable, shall be binding upon me and my heirs, devisees, and personal representatives. Any affidavit executed by my attorney-in-fact stating that my said attorney does not have (at the time of doing an act pursuant to this Power of Attorney) actual knowledge of the revocation or the termination of this Power of Attorney is, in the absence of fraud, conclusive proof of the non-revocation or the non-termination of this Power of Attorney at said time. My indemnity of my attorney-in-fact shall extend to the assets of my estate after my death, and shall be applicable to all instances except for the actual fraud of my attorney-in-fact.

Signed on \_\_\_\_\_.

\_\_\_\_\_  
[Name of person making the will]  
**THANK YOU**  
ATTESTATION CLAUSE

We, the undersigned persons, each of us being 18 years of age or older, declare that the foregoing document was signed, published and declared by [Name of person making the will], the above-named individual, as ~~\*\*\*his or her\*\*\*~~ Durable Power of Attorney. Said individual signed this Power of Attorney in our presence and also acknowledged and affirmed that [Name of person making the will] is 18 years of age or older. We signed this document as witnesses in ~~\*\*\*his or~~

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her\*\*\* presence. We certify that, in our opinion, the said individual was of sound and disposing mind when \*\*\*he or she\*\*\* signed the document.

**PREVIEW**

WITNESSED:

WITNESSED:

\_\_\_\_\_

\_\_\_\_\_

Printed Name:

Printed Name:

\_\_\_\_\_

\_\_\_\_\_

Address:

Address:

\_\_\_\_\_

\_\_\_\_\_

~~**PLEASE DO NOT COPY**~~

**ACKNOWLEDGMENT**

State of Texas

County of [County where the probate will be filed]

Subscribed and sworn to before me by [Name of person making the will] and by the witnesses \_\_\_\_\_ and \_\_\_\_\_, on \_\_\_\_\_.

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

**THIS DOCUMENT**

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

My commission expires: \_\_\_\_\_

[or Notary's Stamp]

**AFTER RECORDING RETURN TO:**

S. Lee Stevenson, Jr.  
Stevenson & Ricker  
Attorneys at Law  
9901 IH 10 West # 800  
San Antonio, TX 78230  
(210) 884-5454.

**THANK YOU**

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**Durable power of attorney for health care purpose - and disclosure statement**

**PREVIEW**

1. This form allows an agent to make health care decisions for the principal. This Durable Power of Attorney for Health Care is based on the durable Power of Attorney for Health Care Act, Texas Civil Practice & Remedies Code § 135.001 et seq. For the Power to be effective, the principal must sign a statement that \*\*\*he or she\*\*\* has received, read, and understood a Disclosure Statement, a form of which is provided.

2. Subject to the statute, and to any express limitation on the authority of the agent set forth in the Power of Attorney, the agent may make any health care decision on behalf of the principal which the principal could make absent the principal's lack of capacity.

3. **PLEASE DO NOT COPY** An agent appointed by a statutory durable Power of Attorney for Health Care may exercise authority under the Power only if the principal's attending physician certifies in writing that, based on the physician's reasonable medical judgment, the principal lacks the capacity to make health care decisions, and files the certification in the principal's medical record.

**THIS DOCUMENT**

**THANK YOU**

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MEDICAL POWER OF ATTORNEY  
**PREVIEW**  
DURABLE POWER OF ATTORNEY FOR HEALTH CARE

**DESIGNATION OF HEALTH CARE AGENT**

I, [Name of person making the will], appoint [Name of person's SPOUSE making the will], of [Address for the person making the will] as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document.

If the agent designated herein is my spouse, the designation is automatically revoked by law if my marriage is dissolved.

This durable power of attorney for health care takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

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**LIMITATIONS ON DECISION-MAKING AUTHORITY OF AGENT**

The authority of my agent to make health care decisions on my behalf is subject to the following limitations:

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**DESIGNATION OF ALTERNATE AGENT**

You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent.

**THIS DOCUMENT**

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent for health care under this document, in the order listed:

[Name of FIRST INDEPENDENT EXECUTOR]

[Address of FIRST INDEPENDENT EXECUTOR]

[Telephone number for the FIRST INDEPENDENT EXECUTOR]

[Name of SECOND INDEPENDENT EXECUTOR]

[Address of SECOND INDEPENDENT EXECUTOR]

[Telephone number for the SECOND INDEPENDENT EXECUTOR]

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LOCATION OF ORIGINAL AND COPIES

The original of this document is kept at [Address for the person making the will], and the following individuals or institutions have signed copies:

**PREVIEW**

[Name of FIRST INDEPENDENT EXECUTOR]

[Address of FIRST INDEPENDENT EXECUTOR]

[Telephone number for the FIRST INDEPENDENT EXECUTOR]

[Name of SECOND INDEPENDENT EXECUTOR]

[Address of SECOND INDEPENDENT EXECUTOR]

[Telephone number for the SECOND INDEPENDENT EXECUTOR]

**PLEASE DO NOT COPY**

**DURATION**

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself, such authority shall include, but not be limited to the following:

1. To request, review, and receive any and all medical, hospital and related information and records, and to execute a release or other document required to obtain such information;

**THIS DOCUMENT**

2. To consent to the disclosure of medical and related information to others;

3. To employ and discharge medical and related personnel;

4. To consent, refuse consent, or withdraw consent to medical care, treatment, service or procedure, subject to my directions expressed in an effective Directive to Physicians;

5. To consent or refuse to consent to outpatient psychiatric care;

6. To provide appropriate relief from pain;

7. To arrange for care and lodging in a hospital, nursing home, or hospice;

**THANK YOU**

8. To grant releases to health care professionals or institutions to assure that my wishes are fulfilled;

9. To authorize anatomical gifts;

10. To arrange to hire and to pay the salaries of employees, nurses and similar health care providers, and to see that required tax returns are filed;

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This power of attorney expires [CHECK OPTION A OR B]

A. \_\_\_\_\_ Until it is revoked by me

or

B. \_\_\_\_\_ [ State the date that it shall expire on].

**REVOCATION OF PREVIOUS DURABLE POWER OF ATTORNEY FOR HEALTH CARE**

I hereby revoke all previous durable powers of attorney for health care which are inconsistent with the terms of this document. However, I do not revoke other power of attorneys including other agency-type arrangements not governed by either of such statutes, including but not limited to statutory powers of attorney or durable powers of attorney for health care, directives to physicians, multi-account agreements at financial institutions.

**ACKNOWLEDGMENT OF DISCLOSURE STATEMENT**

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand the information contained in the disclosure statement.

I sign my name to this durable power of attorney for health care on \_\_\_\_\_, at [Address for the person making the will].

**THIS DOCUMENT**

[Name of person making the will]

[Address for the person making the will]

**STATEMENT OF WITNESSES**

I declare under penalty of perjury that the principal has identified himself or herself to me, that the principal signed or acknowledged this durable power of attorney in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that \*\*\*he or she\*\*\* is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as a witness to \*\*\*his or her\*\*\* execution of this document, that I am not the person appointed as agent by this document, and that I am not a provider of health or residential care, an employee of a provider of health or residential care, the operator of a community care facility, or an employee of an operator of a community care facility.

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to any part of the estate of the principal on the death of the principal under a will or by operation of law.

Signed on **LegalFormsForTexas.Com**

Signature of witness:

# PREVIEW

\_\_\_\_\_  
Printed name of witness

\_\_\_\_\_  
Printed name of witness

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Telephone Number

State of Texas  
County of [County where the probate will be filed]

# PLEASE DO NOT COPY

Subscribed and sworn to before me by [Name of person making the will] and by the witnesses  
\_\_\_\_\_ and \_\_\_\_\_, on \_\_\_\_\_.

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

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

My commission expires: \_\_\_\_\_

[Notary's Stamp]

# THIS DOCUMENT

**AFTER RECORDING RETURN TO:**

S. Lee Stevenson, Jr.  
Stevenson & Ricker  
Attorneys at Law  
9901 IH 10 West # 800  
San Antonio, TX 78230  
(210) 884-5454.

# THANK YOU

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DISCLOSURE STATEMENT  
**PREVIEW**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

**EXCEPT TO THE EXTENT YOU STATE OTHERWISE, THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE AUTHORITY TO MAKE ANY AND ALL HEALTH CARE DECISIONS FOR YOU IN ACCORDANCE WITH YOUR WISHES, INCLUDING YOUR MORAL AND RELIGIOUS BELIEFS, WHEN YOU ARE NO LONGER CAPABLE OF MAKING THEM YOURSELF.**

**BECAUSE "HEALTH CARE" MEANS ANY TREATMENT SERVICE OR PROCEDURE TO MAINTAIN, DIAGNOSE, OR TREAT YOUR PHYSICAL OR MENTAL CONDITION, YOUR AGENT HAS THE POWER TO MAKE A BROAD RANGE OF HEALTH CARE DECISIONS FOR YOU. YOUR AGENT MAY CONSENT, REFUSE TO CONSENT, OR WITHDRAW CONSENT TO MEDICAL TREATMENT AND MAY MAKE DECISIONS ABOUT WITHDRAWING OR WITHHOLDING LIFE-SUSTAINING TREATMENT.**

**YOUR AGENT MAY NOT CONSENT TO VOLUNTARY INPATIENT MENTAL HEALTH SERVICES, CONVULSIVE TREATMENT, PSYCHOSURGERY OR ABORTION. A PHYSICIAN MUST COMPLY WITH YOUR AGENT'S INSTRUCTIONS OR ALLOW YOU TO BE TRANSFERRED TO ANOTHER PHYSICIAN.**

**YOUR AGENT'S AUTHORITY BEGINS WHEN YOUR DOCTOR CERTIFIES THAT YOU LACK THE CAPACITY TO MAKE HEALTH CARE DECISIONS.**

**YOUR AGENT IS OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. UNLESS YOU STATE OTHERWISE, YOUR AGENT HAS THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE HAD.**

**IT IS IMPORTANT THAT YOU DISCUSS THIS DOCUMENT WITH YOUR PHYSICIAN OR OTHER HEALTH CARE PROVIDER BEFORE YOU SIGN IT TO MAKE SURE THAT YOU UNDERSTAND THE NATURE AND RANGE OF DECISIONS THAT MAY BE MADE ON YOUR BEHALF. IF YOU DO NOT HAVE A PHYSICIAN, YOU SHOULD TALK WITH SOMEONE ELSE WHO IS KNOWLEDGEABLE ABOUT THESE ISSUES AND CAN ANSWER YOUR QUESTIONS. YOU DO NOT NEED A LAWYER'S ASSISTANCE TO COMPLETE THIS DOCUMENT, BUT IF THERE IS ANYTHING IN THIS DOCUMENT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.**

**THE PERSON YOU APPOINT AS AGENT SHOULD BE SOMEONE YOU KNOW AND TRUST. THE PERSON MUST BE 18 YEARS OF AGE OR OLDER, OR A PERSON UNDER 18 YEARS OF AGE WHO HAS HAD THE DISABILITIES OF A MINORITY REMOVED. YOU CAN APPOINT YOUR HEALTH OR RESIDENTIAL CARE PROVIDER (e.g., YOUR PHYSICIAN, OR AN EMPLOYEE OF A HOME HEALTH CARE AGENCY, HOSPITAL, NURSING HOME, OR RESIDENTIAL CARE HOME, OTHER THAN A**

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RELATIVE), THAT PERSON HAS TO CHOOSE BETWEEN ACTING AS YOUR AGENT OR AS YOUR HEALTH OR RESIDENTIAL CARE PROVIDER; THE LAW DOES NOT PERMIT A PERSON TO DO BOTH AT THE SAME TIME.

YOU SHOULD INFORM THE PERSON YOU APPOINT THAT YOU WANT THE PERSON TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. YOU SHOULD INDICATE ON THE DOCUMENT ITSELF THE PEOPLE AND INSTITUTIONS WHO HAVE RECEIVED SIGNED COPIES. YOUR AGENT IS NOT LIABLE FOR HEALTH CARE DECISIONS MADE IN GOOD FAITH ON YOUR BEHALF.

EVEN AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS YOURSELF AS LONG AS YOU ARE ABLE TO DO SO, AND TREATMENT CANNOT BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION. YOU HAVE THE RIGHT TO REVOKE THE AUTHORITY GRANTED TO YOUR AGENT BY INFORMING YOUR AGENT OR YOUR HEALTH OR RESIDENTIAL CARE PROVIDER ORALLY OR IN WRITING, OR BY YOUR EXECUTION OF A SUBSEQUENT DURABLE POWER OF ATTORNEY FOR HEALTH CARE. UNLESS YOU STATE OTHERWISE, YOUR APPOINTMENT OF A SPOUSE DISSOLVES ON A DIVORCE.

THIS DOCUMENT CANNOT BE CHANGED OR MODIFIED. IF YOU WANT TO MAKE CHANGES IN THE DOCUMENT, YOU MUST MAKE AN ENTIRELY NEW ONE.

YOU MAY WISH TO DESIGNATE AN ALTERNATIVE AGENT IN THE EVENT THAT YOUR AGENT IS UNWILLING, UNABLE, OR INELIGIBLE TO ACT AS YOUR AGENT. ANY ALTERNATIVE AGENT YOU DESIGNATE HAS THE SAME AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR YOU.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO OR MORE QUALIFIED WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

1. THE PERSON YOU HAVE DESIGNATED AS YOUR AGENT;
2. YOUR HEALTH OR RESIDENTIAL CARE PROVIDER, OR AN EMPLOYEE OF YOUR HEALTH OR RESIDENTIAL CARE PROVIDER;
3. YOUR SPOUSE;
4. YOUR LAWFUL HEIRS OR BENEFICIARIES NAMED IN YOUR WILL OR A DEED; OR,
5. CREDITORS OR PERSONS WHO HAVE A CLAIM AGAINST YOU.

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I certify I have received a copy of this "Information Concerning the Durable Power of Attorney for Health Care, that I have read this document and that I agree to fully understand this document."

**PREVIEW**

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[Name of person making the will]

**PLEASE DO NOT COPY**

**THIS DOCUMENT**

**THANK YOU**

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# PREVIEW

My name is [Name of person making the will] and I reside at [Address for the person making the will], [County where the probate will be filed] County, Texas.

My date of birth is \_\_\_\_\_.

Pursuant to the Texas Anatomical Gift Act, upon my death, I hereby give the following listed organs, tissues and/or parts of my body. This donation is only for the following listed body parts or organs and none other:

[List the body parts and organs to be donated]

This donation is made to \_\_\_\_\_ [Name] for the following purposes only:

1. Medical or Dental Education
2. Medical or Dental Research
3. Medical or Dental Transplantation
4. Medical or Dental Therapy
5. Advancement of Medical or Dental Science

Signed on \_\_\_\_\_.

## THIS DOCUMENT

\_\_\_\_\_  
[Name of person making the will]

State of Texas

County of [County where the probate will be filed]

This instrument was acknowledged before me on \_\_\_\_\_ by [Name of person making the will].

## THANK YOU

\_\_\_\_\_  
Signature of officer

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

My commission expires:

**LegalFormsForTexas.Com**  
[or Notary's Stamp]



**PREVIEW**

**PLEASE DO NOT COPY**

**THIS DOCUMENT**

**THANK YOU**

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