



MEMORANDUM OF EXECUTION OF WILL and Affidavit of Witness

_____ Testator(trix)

Date: _____ Place: _____

Execution conducted by _____

Parties Present

Testator(trix): _____

Identification: Driver's License Medicare Card Passport Other _____

Witness No. 1

Witness No. 2

Witness No. 3 (in any)

Name _____

Identification _____

Compliance Checklist

Testator(trix) stated before the Witnesses:

- 1.____ My name is [Testator(trix) stated his/her name].
- 2.____ The document is my Last Will and Testament.
- 3.____ I have read my Last will and Testament carefully and it correctly states my intentions.
- 4.____ I am not taking any medication that would affect my judgment.
- 5.____ Please act as the subscribing witnesses to my Last Will and Testament.

Testator(trix) answered the following questions correctly:

- 1.____ What year is this?
 - 2.____ Who is the President of the United States now in office?
 - 3.____ What are the names of your closest relatives?
 - 4.____ What are the general characteristics of your estate?
 - 5._____
- _____
- _____

Self-proving affidavit signed contemporaneously with the Last Will and Testament.

Notes: _____

AFFIDAVIT OF WITNESSES

Based on the New York form. Most states have similar forms. Check your state law if you wish to use a state-specific form.

State of

County of

} ss.:

Each of the undersigned,

residing at

residing at

and

residing at

respectively, being individually and severally duly sworn, did depose and say that: The foregoing Last Will and Testament was subscribed in our presence and sight by the Testator(trix) named therein. The undersigned witnessed the execution of the Last Will and Testament on _____ at _____

At the time the instrument was so subscribed, the Testator(trix) declared that the instrument was my Last Will and Testament. The undersigned thereupon signed their names as witnesses at the end of the Last Will and Testament at the request of the Testator(trix), in the presence of the Testator(trix) and each other. At the time of the execution of the Last Will and Testament, in our respective opinions, the Testator(trix) was

- 1) at least eighteen years of age,
- 2) of sound mind, memory and understanding,
- 3) under no constraint, duress, fraud or undue influence,
- 4) in no respect incompetent to make a valid will,
- 5) able to read, write and converse in the English language, and
- 6) was not suffering from any defect of sight, hearing or speech, or from any other physical or mental impairment which would affect his/her capacity to make a valid will.

Each of us was acquainted with the Testator(trix), and we make this affidavit at his/her request. The Last Will and Testament was shown to us at the time this affidavit was made, and we examined it as to the signature of the Testator(trix) and our signatures. The Last Will and Testament was executed as a single, original instrument, and not in counterparts.

Witness

Witness

Witness

Severally subscribed and sworn to
before me on _____

INSTRUCTIONS FOR EXECUTING WILLS*

In Advance

Check all provisions of the Will (substantive dispositions, spelling of names, recitation of domicile, etc.), and make any appropriate revisions. Make sure the page break for the signature page is at an appropriate place in the text.

Complete and check the Testator(trix)'s Family Tree Affidavit and summary of assets (if they are to be used).

Deliver a copy of the Will to the Testator(trix), and confirm that it is understood and that it expresses Testator(trix)'s intent.

Make any necessary revisions, and resubmit any revisions for approval.

Fasten the Will together, preferably with a ribbon and a seal to be affixed by the Testator(trix). Using an eyeletter to bind the Will is an alternative. If you use staples the testator(trix) should be warned never to remove the staples.

Witnesses

Most states require two witnesses. Vermont requires three witnesses. Louisiana requires that the maker affix his/her signature to every page of the document on which material provisions are found, in addition to the last page of the document, and further requires that the execution of the maker of a will be attested to by a notary.

Day of Execution

Have the Testator(trix) and witnesses assemble in a room and engage in conversation, so the witnesses can testify that the Testator(trix) is of sound mind. The witnesses should be adults over the age of 18 who are not beneficiaries under the Will. If possible, the witnesses should be people who will be easy to locate upon the death of the Testator(trix). During the execution of the Will, the Testator(trix) and all witnesses must at all times be present. No one should leave the room, or be out of the sight or hearing of the others. The Will should never be out of the sight of anyone. The proceedings should reflect the gravity of making a will.

Have the Testator(trix) again read the Will (the "original" which is to be executed).

Ask the Testator(trix) whether the Will states his/her intent. *[If not, make any necessary revisions before the execution of the Will.]*

Ask the Testator(trix) to insert the date of the Will (if

blank) and sign the Will (using his/her name as typed in the Will), in the presence of all of the witnesses. BLACK INK is preferred. Only the "original" Will should be signed, not any copies.

Ask the Testator(trix): "Do you declare this to be your Last Will and Testament?"

Ask the Testator(trix): "Do you wish that *[name the Witnesses]* act as witnesses to your Will, and sign their names as witnesses to your Will, and sign an affidavit that they witnessed the execution of your Will?"

Exhibit the signature of the Testator(trix) to the witnesses. *[The witnesses do not have to know the content of the Will. The witnesses need not, and should not, read the entire Will.]*

The witnesses (in the presence of each other and the Testator(trix)) should sign their names and write their home addresses at the end of the Will.

Tell the witnesses: "The formal requirements of the statutes of the state of *[name the state]* regarding the ceremony of execution and attestation of a will have been duly fulfilled and satisfied."

The witnesses should read the Affidavit which follows the Will and execute and swear to it before a notary public.

Inspect the Will and confirm that the date, signatures, and other blanks are properly inserted and legible. The Will cover should be dated.

Post-Execution

Conform copies of the Will and the Affidavit by inserting the dates, names and addresses that have been added to the original.

Determine where the original Will is to be kept, and deliver it (getting a receipt). Send a letter to the Testator(trix), reciting the time and place of the execution of the Will, and the location of the original Will (or enclosing it). If the original Will is delivered to the Testator(trix), inquire where it will be kept and request that the Executor be informed of the location.

Remind the Testator(trix) that if revisions are necessary, a new Will will have to be executed in the same manner the original will was executed. The Testator(trix) should not write on or otherwise attempt to revise the Will.

Decide whether to retain or destroy any older, superseded wills, and document the disposition.

* Information drawn from the "WILLS LIBRARY," DL Drafting Libraries, document assembly programs. For more information go to www.blumberg.com/software/dl/index.html

TERMS USED IN WILLS

Several terms frequently are used in wills. Although they may seem like “legalese,” they are used since their meanings are clear.

“**Issue**” means not only a person's children, but also any grandchildren and great grandchildren (i.e., all of the person's direct descendants). Legally adopted children and grandchildren are included, unless the will expressly excludes them.

“**Per stirpes**” describes the way a bequest is to be divided among a person's issue. Most people want bequests to their children to be divided equally among the children. A *per stirpes* distribution does this, and it also governs what happens if any child has died. If a child has died, his/her share is divided among his issue if he/she has any issue. For example, presume that you have three children (Karen, Tim and Ben) and that your will provides for a bequest to your children *per stirpes*. If all three children survive you, each would get one third of the property. If, however, Tim has died, his one third share would be divided among his children if he had any, or if he had no living issue his one third share would pass to Karen and Ben.

“**Lapse**” means that a bequest is to be ignored if the beneficiary is not alive when the bequest is to take effect.

“**Executor**” refers to the person who is to probate your will, file tax returns, make any discretionary decisions, and handle the paper work for your estate.

“**Trustee**” refers to the person who will administer any trust which you set up in your will.

WILL BINDING INSTRUCTIONS

Fasten the Will together, preferably with a ribbon and a seal to be affixed by the Testator. Using document eyelets to bind the Will is an alternative. Some attorneys use staples, but if you do so the client should be warned never to remove the staples.

How To Ribbon A Will—Use a razor to make three horizontal cuts on the signature page of the Will, where the seal is to be affixed next to the signature line for the Testator. The cuts should be parallel, about 1/4" apart and about 1/2" in length (the ribbon later will be fed through these cuts). Replace the signature page in the Will, and fold the cover over the top edge of the Will.

Punch three evenly spaced holes through the folded edge of the cover and pages of the Will. Take a 4 foot length of ribbon and feed all but 1 foot of it up the center hole starting behind the signature page. Then feed the ribbon down the left hole, back up the center hole, and down the right hole. Then feed the ribbon back up the center hole until you reach the signature page, so that the two ends of the ribbon both come out of the center hole behind the signature page. Feed both ends of the ribbon up, then down, and back up through the three cuts on the signature page. Cut off any excess ribbon so that only about 2" of ribbon appears below the cuts on the signature page. The Testator should affix a seal over the cuts when he executes the Will. (*More information at www.blumberg.com/will/index.html.*)