

SAMPLE ONLY – CONSULT LEGAL COUNSEL BEFORE COMPLETING ANY WILL

**WILL
OF
EXAMPLE**

I, _____, also known as _____, a resident of _____ County, Colorado, revoke any prior wills and codicils made by me and declare this to be my will.

ARTICLE 1 – FAMILY INFORMATION

I am married to . Any reference in my will to my spouse is to such person. [ALTERNATIVE 1 – My children now living are _____, born _____, and _____, born _____.] [ALTERNATIVE 2 – My deceased children are _____, born _____, and _____, born _____.] Any reference in my will to my children is to such children and to any children subsequently born to or legally adopted by me. Any reference in my will to my descendants is to my children and their descendants.

ARTICLE 2 – SPECIFIC AND GENERAL GIFTS

2.1 GIFT TO SPOUSE: I give all my household goods, personal effects, and other articles of tangible personal property, together with any insurance policies covering such property and claims under such policies, to my spouse, if my spouse survives me.

2.2 SEPARATE MEMORANDUM: If my spouse does not survive me, I give such property in accordance with any memorandum directing the disposition of such property signed by me or in my handwriting which I may leave at my death.

2.3 CONTINGENT GIFT: If my spouse does not survive me, and if for any reason no such memorandum is in existence at my death, or to the extent such memorandum fails to dispose of all of such property effectively, I give such property not disposed of, except such property used

in any business in which I may have an interest, to my children who survive me, but not to their descendants, in shares of substantially equal value, to be divided among them as they and such other person as my personal representative may select to represent any child of mine believed by my personal representative to be incapable of acting in his or her own best interest, shall agree. In case my children and such other person do not agree upon the division of such property within three months after the appointment of my personal representative, my personal representative shall make the division. Notwithstanding the foregoing, should my personal representative determine that it would not be in the best interest of my children to receive possession of any item of such property, my personal representative may sell such item and add the proceeds to my residuary estate. All reasonable expenses of storage, packing, shipping, delivery, insurance or sale shall be paid as expenses of administration.

ARTICLE 3 – RESIDUARY ESTATE

3.1 DEFINITION OF RESIDUARY ESTATE: All the remainder of my estate, including property referred to above that is not effectively disposed of, shall be referred to in this will as my “residuary estate.” I do not exercise any power of appointment under the provisions of this article.

3.2 DISPOSITION OF RESIDUARY ESTATE:

- a) Primary Disposition: I give my residuary estate to my spouse if my spouse survives me.
- b) Contingent Disposition: If my spouse does not survive me, I give my residuary estate to my descendants by representation.

3.3 REMOTE CONTINGENT DISPOSITION: If there is no person or entity qualified to receive final distribution of my residuary estate or any part of it, then any such portion of my residuary estate with respect to which such failure of qualified recipients has occurred shall be distributed one-half to those persons who would inherit it had I died intestate, unmarried, and not a partner in a civil union owning such property, and one-half to those persons who would inherit it had my spouse simultaneously died intestate, unmarried, and not a partner in a civil union owning such property, all as determined and in the proportions provided by the laws of Colorado

in effect at my death.

ARTICLE 4 – DESIGNATION AND SUCCESSION OF FIDUCIARIES

4.1 PERSONAL REPRESENTATIVE: I nominate my spouse as my personal representative. If my spouse fails or ceases to act as my personal representative, I nominate _____ of _____ as my personal representative.

ARTICLE 5 – POWERS OF FIDUCIARIES

5.1 GRANT: My fiduciaries may perform every act reasonably necessary to administer my estate and any trust established under my will. Specifically, my fiduciaries may hold, retain, invest, reinvest and manage real or personal property, including interests in any form of business entity including, but not limited to, limited partnerships and limited liability companies, and policies of life, health and disability insurance, without diversification as to kind, amount, or risk of non-productivity and without limitation by statute or rule of law but in all other respects in accordance with the Colorado Uniform Prudent Investor Act. They may partition, sell, exchange, grant, convey, deliver, assign, transfer, lease, option, mortgage, pledge, abandon, borrow, loan, contract, distribute in cash or kind or partly in each at fair market value on the date of distribution, without requiring pro rata distribution of specific property and without requiring pro rata allocation of the tax basis of such property. They may hold in nominee form, continue businesses, carry out agreements, deal with themselves, other fiduciaries and business organizations in which my fiduciaries may have an interest. They may establish reserves, release powers, and abandon, settle, or contest claims. They may employ attorneys, accountants, investment advisors, custodians of trust property, and other agents or assistants as deemed advisable to act with or without discretionary powers and compensate them and pay their expenses from income or principal or both.

5.2 FIDUCIARIES' POWERS ACT: In addition to all of the above powers, my fiduciaries may exercise those powers set forth in the Colorado Fiduciaries' Powers Act as amended after the date of this instrument. I incorporate such Act as it exists today by reference and make it a part of this instrument.

5.3 DISTRIBUTION ALTERNATIVES: My fiduciaries may make any payments under my will or any trust under my will:

- a) Directly to the beneficiary;
- b) In any form allowed by applicable state law for gifts or transfers to minors or persons under disability;
- c) To the beneficiary's guardian, conservator, or caregiver for the benefit of the beneficiary; and
- d) By direct payment of the beneficiary's expenses. A receipt by the recipient for any such distribution, if such distribution is made in a manner consistent with the proper exercise of my fiduciaries' duties hereunder, shall fully discharge my fiduciaries.

ARTICLE 6 – ADMINISTRATIVE PROVISIONS

6.1 COURT PROCEEDINGS: Any trust established under this instrument shall be administered in a timely and efficient manner consistent with its terms, free of active judicial intervention and without order, approval, or other action by any court. It shall be subject only to the jurisdiction of a court being invoked by the trustees or other interested parties or as otherwise provided by law.

6.2 NO BOND: I direct that no fiduciary shall be required to give any bond in any jurisdiction, and if, notwithstanding this direction, any bond is required by any law, statute, or rule of court, no sureties be required.

6.3 COMPENSATION: Any fiduciary under this instrument shall be entitled to reasonable compensation commensurate with services actually performed and to be reimbursed for expenses properly incurred.

6.4 INALIENABILITY: No beneficiary shall have any right to anticipate, sell, assign, mortgage, pledge, or otherwise dispose of or encumber all or any part of any trust estate established for his or her benefit under this instrument. No part of such trust estate, including income, shall be liable for the debts or obligations of any beneficiary or be subject to attachment,

garnishment, execution, creditor's bill, or other legal or equitable process.

6.5 DISTRIBUTION TO DISABLED PERSONS OR PERSONS UNDER 21: If any beneficiary to whom my personal representative is directed to distribute any share of my probate estate is under the age of 21 years or is, in the opinion of that fiduciary, under any disability which renders such beneficiary unable to administer distributions properly when the distribution is to be made, such fiduciary, in its discretion, acting as trustee, may continue to hold such beneficiary's share as a separate trust until he or she reaches the age of 21 or overcomes the disability, when my trustee shall distribute such beneficiary's trust to him or her.

- a) While any trust is being held under this paragraph, my trustee may distribute to, or apply for the benefit of, the beneficiary for whom the trust is held such amounts of the net income or principal, or both, as my trustee may determine in its sole and absolute discretion. Any undistributed net income may be added to principal from time to time in the discretion of my trustee. My trustee shall exercise its discretion in such a manner as to maximize medical or public assistance benefits, and shall not enter into any agreement with any representative of a medical or public assistance program or governmental entity which compromises such beneficiary's continued care or eligibility for services in or from any public or private institution or facility. My trustee's discretion shall be absolute and binding on all persons, including any organization providing benefits to the beneficiary.
- b) Upon the death of such beneficiary before he or she attains the age of 21 years or before his or her disability ceases, my trustee shall distribute the trust, including any accrued and undistributed net income, to such persons as such beneficiary may appoint by his or her will. Such will may be made either before or after my death, making specific reference to this power, and shall be admitted to probate in a formal or informal proceeding. This special power may not be exercised in favor of such beneficiary's estate, such beneficiary's creditors, or the creditors of such beneficiary's estate. To the extent this special power of appointment is not exercised, on the death of such beneficiary, the trust property shall be distributed to his or her then-living descendants by representation, or, if none, to the then-

living descendants by representation of that parent of the beneficiary who was a child of mine, or, if none, to my then-living descendants by representation.

6.6 PROTECTION AGAINST PERPETUITIES RULE: Every trust hereunder, and every trust created by the exercise of a power of appointment hereunder, shall terminate no later than the end of the period allowed by the applicable Rule Against Perpetuities and the trust property shall be distributed to the persons then entitled to the income from the trust in the proportions in which they are entitled to such income. For this purpose only, any person eligible to receive discretionary distributions of income from a particular trust shall be treated as being entitled to receive the income. If two or more persons are so treated, they shall be treated as being entitled to receive the income by representation if they have a common ancestor, or in equal shares if they do not.

6.7 ANCILLARY FIDUCIARY: In the event ancillary administration shall be required or desired and my domiciliary personal representative is unable or unwilling to act as an ancillary fiduciary, my domiciliary personal representative shall have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may either be a natural person or a corporation. My domiciliary personal representative may delegate to such ancillary fiduciary such powers granted to my original personal representative as my personal representative may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate shall be paid over to the domiciliary personal representative.

ARTICLE 7 – TAX PROVISIONS

7.1 DEATH TAXES: I direct that all estate, inheritance, and succession taxes payable by reason of my death shall be apportioned as provided under the law of Colorado then in effect at the date of my death.

ARTICLE 8 – GENERAL PROVISIONS

8.1 ADOPTED CHILDREN: A child adopted by any person and the descendants by blood or adoption of such child shall be considered the descendants of such adopting person and of such person's ancestors if the adoption is by legal proceeding while the child is under the age of 21

years.

8.2 APPLICABLE LAW: The validity and construction of my will shall be determined by the laws of Colorado. Questions of administration of any trust established under my will shall be determined by the laws of the situs of administration of such trust.

8.3 BY REPRESENTATION: Whenever property is to be distributed or divided among descendants of a designated person “by representation,” the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share and the share of each deceased descendant in the same generation is divided among his or her descendants in the same manner.

8.4 CONSTRUCTION: Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural. Words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender, if appropriate.

8.5 HEADINGS AND TITLES: The headings and paragraph titles are for reference only.

8.6 OTHER DEFINITIONS: Except as otherwise provided in this instrument, terms shall be as defined in the Colorado Probate Code as amended after the date of this instrument and after my death.

8.7 SURVIVORSHIP: For purposes of this will, any beneficiary shall be deemed to have predeceased me if such beneficiary dies within 30 days after the date of my death.

8.8 SEVERABILITY: If any part of this instrument shall be adjudicated to be void or invalid, the remaining provisions not specifically so adjudicated shall remain in full force and effect.

***** End of Form *****

NOTES ON USE

- 1) This will form does not contain estate tax planning provisions and therefore may be inappropriate for a client whose estate may be subject to federal estate taxation, either at the client's death or at the death of the client's spouse or partner in a civil union.
- 2) The client's preference regarding contingent beneficiaries should be determined. You may wish to encourage clients to consider gifts to charity. *See* Note on Use 21, General and Administrative Provisions (Tab A).
- 3) The trust provided for under this paragraph is a pure discretionary trust. The trustee's discretion to make distributions is complete and absolute, and not limited by the ascertainable standards of health, education, support, or maintenance. Requiring the trustee to fulfill the beneficiary's health and support needs would jeopardize the beneficiary's qualification for public assistance.
- 4) This provision gives the trust beneficiary a limited testamentary power of appointment which can be exercised in favor of any "person" *other than* the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate. "Person" is defined in the Colorado Probate Code as "an individual or an organization." C.R.S. § 15-10-201(38). An example of a more restrictive limited power of appointment is found in Form 13A, § 10.1(d), where the class of eligible beneficiaries is limited to settlor's descendants. See also Tab E regarding the generation-skipping transfer tax consequences of distributions to person one or more generations younger than the settlor or testator.

The language regarding default beneficiaries is intended to provide for distribution to the family line most closely related to the deceased beneficiary. Other specific default beneficiaries could be named instead, or reference could be made to the "Remote Contingent Disposition" section of this Form.

- 5) The statute regarding witnessing and notarizing a will is C.R.S. § 15-11-502. The form is listed in a manner so as to facilitate a will being both witnessed and notarized without significant modification. Should the lawyer so decide, the lawyer may remove either the witness section or the notary section and have the form either witnessed or notarized in accordance with C.R.S. § 15-11-502(1)(c).

However, removing either will prevent the will from being a self-proved will and may require a formal probate proceeding at the testator's death in order to prove that the will is valid. Further, a will lacking witnesses or notarization, although valid in Colorado, may not be accepted in other states.

The comment to C.R.S. § 15-11-504 states:

A self-proved will may be admitted to probate as provided in [UPC] Sections 3-303, 3-405, and 3-406 without the testimony of any attesting

witness, but otherwise it is treated no differently from a will not self proved. Thus, a self-proved will may be contested (except in regard to questions of proper execution), revoked, or amended by a codicil in exactly the same fashion as a will not self proved. The procedural advantage of a self-proved will is limited to formal testacy proceedings because Section 3-303, which deals with informal probate, dispenses with the necessity of testimony of witnesses even though the instrument is not self proved under this section.

- 6) See Note on Use 4 in Tab A, "General and Administrative Provisions."