

SOUTH DAKOTA WILL FOR REMARRIED WITH MINOR CHILDREN

This South Dakota Will For Remarried With Minor Children is a legal document that specifies what happens to your property when you die. It details to whom certain assets should go and assigns an executor to handle the estate.

You must name each child in the will. Even if you don't intend to leave any of your assets to the child(ren), each one must be mentioned by name in the will. Every child from the current and previous marriage(s) **MUST** be mentioned in the will.

The will **MUST** be witnessed and notarized.

Make several copies of your will and give them to people you trust, particularly the person you are designating as your executor.

LAST WILL AND TESTAMENT
OF

I, _____, of _____, revoke any and all former Wills and Codicils and declare this to be my Last Will and Testament.

ARTICLE I
IDENTIFICATION OF FAMILY

I am married to _____ and all references in this Will to "my spouse" are references to _____.

The names of my children from my prior marriage are _____

All references in this Will to "children from my prior marriage" are references to the above-named children.

The names of my children from my current marriage are _____

All references in this Will to "children from my current marriage" are references to the above-named children and any children born to me or adopted by me after the signing of this Will.

ARTICLE II
PAYMENT OF DEBTS AND EXPENSES

I direct that my debts, funeral expenses and expenses of last illness be first paid from my estate.

ARTICLE III
DISPOSITION OF PROPERTY

A. *Specific Bequests.* I direct that the following specific bequests be made from my estate.

1. _____ shall be distributed to _____
_____. If this beneficiary does not survive me this bequest shall be distributed with my residuary estate.

2. My remaining tangible personal property shall be distributed to _____
_____. If this beneficiary does not survive me this bequest shall be distributed with my residuary estate.

B. *Residuary Estate.* I direct that my residuary estate be distributed to the following beneficiaries in the percentages as shown:

____% - my Trustee of the "Trust for Children from my Prior Marriage", to be retained, managed and distributed under the provisions of Article IV.

____% - my Trustee of the "Trust for Children from my Current Marriage", to be retained, managed and distributed under the provisions of Article V.

____% - my spouse, _____. If my spouse does not survive me, my spouse's share of the residuary estate shall be distributed proportionately to the other classes listed under this provision.

Percentage Total ____%

**ARTICLE IV
TRUST FOR CHILDREN FROM MY PRIOR MARRIAGE**

A. Purpose. The primary purpose of this Trust is to provide for the health, support, maintenance, and education of my children from my prior marriage.

B. Use and Distribution. Until there is no living child of mine from my prior marriage under the age of ____ years, the Trustee shall pay to any child of mine or descendant of any deceased child of mine from my prior marriage, such sums from the income or principal as the Trustee deems advisable for such beneficiary's health, education, support, and maintenance. Any such payments need not be equal between or among my children from my prior marriage and descendants of deceased children from my prior marriage either as individuals or as separate groups, and their distributive shares shall not be charged for such distributions. In making such distributions, the Trustee shall take into consideration their respective needs and any and all other income and property that is known by the Trustee to be available to the beneficiaries for the above purposes. Any income not distributed shall be added to principal. When there is no living child of mine from my prior marriage under the age of ____ years, the Trustee shall divide the Trust into equal shares, one share for each then living child of mine from my prior marriage, and one share for the then living descendants, collectively, of each deceased child of mine from my prior marriage.

The shares shall be distributed to my surviving children (and/or surviving descendants, in the case of a deceased child, by right of representation) from my prior marriage and this Trust shall then terminate.

C. No Surviving Descendants. If at any time before final distribution of this Trust for Children from My Prior Marriage, there is not in existence anyone who is, or might become, entitled to receive benefits under the foregoing provisions of this Trust, then any portion of this Trust then remaining shall be paid over and distributed outright to the following beneficiaries in the percentages as shown:

____% - _____, _____,
_____.

Percentages Total - ____%.

D. Protection of Beneficiaries. The interest of any beneficiary under this Trust shall not be subject to assignment, anticipation, claims of creditors, or seizure by legal process. If the Trustee believes that the interest of any beneficiary is threatened to be diverted in any manner from the purposes of this Trust, the

Trustee shall withhold the income and principal from distribution, and shall apply payment in the Trustee's discretion in such manner as the Trustee believes shall contribute to the health, support, maintenance, and education of the beneficiaries. When the Trustee is satisfied that such diversion is no longer effective or threatened, the Trustee may resume the distributions of income and principal authorized. If a separate Trust share had been designated for such beneficiary prior to such withholding by the Trustee, any undistributed income from such share shall be added to the principal of that beneficiary's share.

E. Nomination of Trustee. I nominate _____, of _____, as the Trustee, without bond. If such person or entity does not serve for any reason, I nominate _____, of _____, without bond.

F. *Additional Trustee Provisions.* These additional provisions shall apply regarding the Trustee.

1. *Resignation, Incapacity, or Death of the Trustee.* Upon the resignation, incapacity, or death of the Trustee, _____, of _____, is designated as the successor Trustee without bond. Such designee shall become the successor Trustee upon acceptance of the terms and conditions of this Agreement. For the purposes of this Trust, "incapacity" means a legal disability or the inability to provide prompt and intelligent consideration to financial matters by reason of illness or mental or physical disability.

2. *Resignation of Trustee.* The Trustee, or any successor, may resign at any time by giving 60 days' written notice to all adult beneficiaries, and to a parent or guardian, if any, of each minor beneficiary of the Trust.

3. *Successor Trustee.* The beneficiaries to whom such notice of resignation is given shall designate a successor Trustee by written notice to the resigning Trustee within 60 days after receipt of the notice of resignation. If a successor Trustee is not so designated, the resigning Trustee shall have the right to secure the appointment of a successor Trustee by a court of competent jurisdiction, at the expense of the Trust. If a successor Trustee is appointed, such trustee shall be bound by, and subject to, the provisions of this Trust.

4. *Accounting.* The Trustee shall provide an accounting to the Beneficiary (or Beneficiaries) on at least an annual basis. If a beneficiary has a "disability", the Trustee shall provide the accounting to a guardian or conservator of the beneficiary, if any.

5. *Bond.* Successor Trustees, other than those nominated in this Trust, shall serve without bond.

ARTICLE V

TRUST FOR CHILDREN FROM MY CURRENT MARRIAGE

A. *Purpose.* The primary purpose of this Trust is to provide for the health, support, maintenance, and education of my children from my current marriage.

B. *Use and Distribution.* Until there is no living child of mine from my current marriage under the age of ___ years, the Trustee shall pay to any child of mine from my current marriage or descendant of any deceased child of mine from my current marriage, such sums from the income or principal as the Trustee

deems advisable for such beneficiary's health, education, support, and maintenance. Any such payments need not be equal between or among my children from my current marriage and descendants of deceased children from my current marriage either as individuals or as separate groups, and their distributive shares shall not be charged for such distributions. In making such distributions, the Trustee shall take into consideration their respective needs and any and all other income and property that is known by the Trustee to be available to the beneficiaries for the above purposes. Any income not distributed shall be added to principal. When there is no living child of mine from my current marriage under the age of ___ years, the Trustee shall divide the Trust into equal shares, one share for each then living child of mine from my current marriage, and one share for the then living descendants, collectively, of each deceased child of mine from my current marriage.

The shares shall be distributed to my surviving children (and/or surviving descendants, in the case of a deceased child, by right of representation) from my current marriage and this Trust shall then terminate.

C. *No Surviving Descendants.* If at any time before final distribution of this Trust for Children From My Current Marriage, there is not in existence anyone who is, or might become, entitled to receive benefits under the foregoing provisions of this Trust, then any portion of this Trust then remaining shall be paid over and distributed outright to the following beneficiaries in the percentages as shown:

_____% - _____, _____,

Percentages Total - ____%.

D. *Protection of Beneficiaries.* The interest of any beneficiary under this Trust shall not be subject to assignment, anticipation, claims of creditors, or seizure by legal process. If the Trustee believes that the interest of any beneficiary is threatened to be diverted in any manner from the purposes of this Trust, the Trustee shall withhold the income and principal from distribution, and shall apply payment in the Trustee's discretion in such manner as the Trustee believes shall contribute to the health, support, maintenance, and education of the beneficiaries. When the Trustee is satisfied that such diversion is no longer effective or threatened, the Trustee may resume the distributions of income and principal authorized. If a separate Trust share had been designated for such beneficiary prior to such withholding by the Trustee, any undistributed income from such share shall be added to the principal of that beneficiary's share.

E. *Nomination of Trustee.* I nominate _____, of _____, as the Trustee, without bond. If such person or entity does not serve for any reason, I nominate _____, of _____, to be the Trustee, without bond.

F. *Additional Trustee Provisions.* These additional provisions shall apply regarding the Trustee.

1. *Resignation, Incapacity, or Death of the Trustee.* Upon the resignation, incapacity, or death of the Trustee, _____, is designated as the successor Trustee without bond. Such designee shall become the successor Trustee upon acceptance of the terms and

conditions of this Agreement. For the purposes of this Trust, "incapacity" means a legal disability or the inability to provide prompt and intelligent consideration to financial matters by reason of illness or mental or physical disability.

2. *Resignation of Trustee.* The Trustee, or any successor, may resign at any time by giving 60 days' written notice to all adult beneficiaries, and to a parent or guardian, if any, of each minor beneficiary of the Trust.

3. *Successor Trustee.* The beneficiaries to whom such notice of resignation is given shall designate a successor Trustee by written notice to the resigning Trustee within 60 days after receipt of the notice of resignation. If a successor Trustee is not so designated, the resigning Trustee shall have the right to secure the appointment of a successor Trustee by a court of competent jurisdiction, at the expense of the Trust. If a successor Trustee is appointed, such trustee shall be bound by, and subject to, the provisions of this Trust.

4. *Accounting.* The Trustee shall provide an accounting to the Beneficiary (or Beneficiaries) on at least an annual basis. If a beneficiary has a "disability", the Trustee shall provide the accounting to a guardian or conservator of the beneficiary, if any.

5. *Bond.* Successor Trustees, other than those nominated in this Trust, shall serve without bond.

ARTICLE VI NOMINATION OF EXECUTOR

I nominate _____, of _____, as the Executor, without bond or security.

ARTICLE VII EXECUTOR AND TRUSTEE POWERS

My Executor, with respect to my estate, and my Trustee(s) with respect to my trust(s), in addition to other powers and authority granted by law or necessary or appropriate for proper administration, shall have the following rights, powers, and authority without order of court and without notice to anyone:

A. *Receive Assets.* To receive, hold, maintain, administer, collect, invest and re-invest the estate and trust assets, and collect and apply the income, profits, and principal of the estate and trust in accordance with the terms of this instrument.

B. *Receive Additional Assets.* To receive additional assets from other sources, including assets received under the Wills of other persons.

C. *Standard of Care.* To acquire, invest, reinvest, exchange, retain, sell, and manage estate and trust assets, exercising the judgment and care, under the circumstances then prevailing, that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of that standard, the Executor and Trustee are authorized to acquire and retain every kind of property, real,

personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, that persons of prudence, discretion and intelligence acquire or retain for their own account, even though not otherwise a legal investment for trust funds under the laws and statutes of the United States or the state under which this instrument is administered.

D. Retain Assets. To retain any asset, including uninvested cash or original investments, regardless of whether it is of the kind authorized by this instrument for investment and whether it leaves a disproportionately large part of the estate or trust invested in one type of property, for as long as the Executor or Trustee deems advisable.

E. Dispose of or Encumber Assets. To sell, option, mortgage, pledge, lease or convey real or personal property, publicly or privately, upon such terms and conditions as may appear to be proper, and to execute all instruments necessary to effect such authority.

F. Settle Claims. To compromise, settle, or abandon claims in favor of or against the estate or trust.

G. Manage Property. To manage real estate and personal property, borrow money, exercise options, buy insurance, and register securities as may appear to be proper.

H. Allocate Between Principal and Income. To make allocations of charges and credits as between principal and income as in the sole discretion of the Executor or Trustee may appear to be proper.

I. Employ Professional Assistance. To employ and compensate counsel and other persons deemed necessary for proper administration and to delegate authority when such delegation is advantageous to the estate or trust.

J. Distribute Property. To make division or distribution in money or kind, or partly in either including disproportionate in-kind distributions, at values to be determined by the Executor or Trustee, and the judgment of either in such respect shall be binding upon all interested parties.

K. Enter Contracts. To bind the estate or trust by contracts or agreements without assuming individual liability for such contracts.

L. Exercise Stock Ownership Rights. To vote, execute proxies to vote, join in or oppose any plans for reorganization, and exercise any other rights incident to the ownership of any stocks, bonds or other properties of the estate or trust.

M. Duration of Powers. To continue to exercise the powers provided in this Article notwithstanding the termination of the trust until all the assets of the trust have been distributed.

N. Hold Trust Assets as a Single Fund. To hold the assets of the trust, shares, or portions of the trust created by this instrument as a single fund for joint investment and management, without the need for physical segregation, dividing the income proportionately among them. Segregation of the various trust shares need only be made on the books of the Trustee for accounting purposes.

O. Loans to Beneficiaries. To make loans to any trust beneficiary for the purpose of providing the beneficiary with the funds necessary to take advantage of exceptional business opportunities; to

make loans to trust beneficiaries to provide for the needs of the beneficiaries and their families.

P. Methods of Distribution. To make payments to or for the benefit of any beneficiary (specifically including any beneficiary under any legal disability) in any of the following ways: (a) directly to the beneficiary; (b) directly for the maintenance, welfare and education of the beneficiary; (c) to the legal or natural guardian of the beneficiary; or (d) to anyone who at the time shall have custody and care of the person of the beneficiary. The Executor or Trustee shall not be obliged to see to the application of the funds so paid, but the receipt of the person to whom the funds were paid shall be full acquittance of the Executor or Trustee.

Q. Informal Administration. My Executor shall have the right to administer my estate using "informal", "unsupervised", or "independent" probate or equivalent legislation designed to operate without unnecessary intervention by the probate court.

ARTICLE VIII MISCELLANEOUS PROVISIONS

A. Paragraph Titles and Gender. The titles given to the paragraphs of this Will are inserted for reference purposes only and are not to be considered as forming a part of this Will in interpreting its provisions. All words used in this Will in any gender shall extend to and include all genders, and any singular words shall include the plural expression, and vice versa, specifically including "child" and "children", when the context or facts so require, and any pronouns shall be taken to refer to the person or persons intended regardless of gender or number.

B. Liability of Fiduciary. No fiduciary who is a natural person shall, in the absence of fraudulent conduct or bad faith, be liable individually to any beneficiary of my estate or any trust estate, and my estate or the trust estate shall indemnify such natural person from any and all claims or expenses in connection with or arising out of that fiduciary's good faith actions or nonactions of the fiduciary, except for such actions or nonactions which constitute fraudulent conduct or bad faith. No successor trustee shall be obliged to inquire into or be in any way accountable for the previous administration of the trust property.

C. Beneficiary Disputes. If any bequest requires that the bequest be distributed between or among two or more beneficiaries, the specific items of property comprising the respective shares shall be determined by such beneficiaries if they can agree, and if not, by my Executor.

IN WITNESS WHEREOF, I have subscribed my name below, this ____ day of _____.

We, the undersigned, hereby certify that the above instrument, which consists of ____ pages, including

the page(s) which contain the witness signatures, was signed in our sight and presence by _____ (the "Testator"), who declared this instrument to be the Testator's Last Will and Testament and we, at the Testator's request and in the Testator's sight and presence, and in the sight and presence of each other, do hereby subscribe our names as witnesses on the date shown above.

Witness Signature: _____

Name: _____

City: _____

State: _____

Witness Signature: _____

Name: _____

City: _____

State: _____

AFFIDAVIT

I, _____, the Testator, sign my name to this instrument this _____ day of _____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Will and that I sign it willingly in the presence of the undersigned witnesses, that I execute it as my free and voluntary act for the purposes expressed in the Will, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator Signature: _____

We, _____ and _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as the Testator's will and that the Testator signs it willingly in our presence, and that the Testator executes it as the Testator's free and voluntary act for the purposes expressed in the will, and that each of us, in the presence and hearing of the Testator, at the Testator's request, and in the presence of each other, hereby signs this will, on the date of the instrument, as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind and memory, and under no constraint or undue influence, and the witnesses are of adult age and otherwise competent to be witnesses.

Witness Signature: _____

Name: _____

City: _____

State: _____

Witness Signature: _____

Name: _____

City: _____

State: _____

STATE OF _____

COUNTY OF _____

Subscribed, sworn to and acknowledged before me by _____, the
Testator; and subscribed and sworn to before me by _____ and
_____, witnesses, this _____ day of _____.

Signature _____

(Seal)

Notary public, or other officer
authorized to take and certify
acknowledgments and administer oaths