

DAVENPORT'S FLORIDA WILLS AND ESTATE PLANNING LEGAL FORMS

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CHAPTER 1

GUIDE TO FORMS AND BOOK USERS

IN THIS BOOK ARE 11 FORMS BUT MOST PEOPLE ONLY USE A FEW

In this book 11 forms are provided but most people only use a few. The forms are:

Form 1. Last Will And Testament (Standard) (this controls things after death like property and money, picks an executor to handle things, and say less costly options can be used);

Form 2. Last Will And Testament (Guardians) (this is a Will to control things after death with a Guardians paragraph for those with minor child or giving things to persons under 18);

Form 3. Self-Proving Affidavit (often done to later help show a Will was signed correctly);

Form 4. Tangible Personal Property List (lets a person easily write down outside a Will wanted gifts of “tangible personal property” like clothes, furniture, tools, cars, and jewelry);

Form 5. Living Will (lets person say if ever in extreme bad health that treatment of little help should not be given, and if wanted lets a person be named “surrogate” to control this);

Form 6. Health Care Surrogate (lets person be named “surrogate” to control if needed health care (in general not just extreme situations), and also lets instructions be given);

Form 7. Do Not Resuscitate Order (often called a D.N.R. this shows paramedics and others not to try restarting the heart or breathing (cardiopulmonary resuscitation/CPR);

Form 8. Final Wishes (lets orders about funeral, burial, and related matters be given);

Form 9. Codicil (lets one make changes to an existing Will, but most just do a new Will);

Form 10. Durable Power Of Attorney (also called “Financial Power Of Attorney” lets power over money, property, and more be shared with someone so they can do things);

Form 11. Power Of Attorney Of Parent (lets parent give power to someone over a child such as school, medical care, school, and home matters to help if parents are not near).

on their property, and things or parts of things their resources bought or fixed.

People can change ownership by a contract or gift, and doing it in writing to be clear is legally best. A verbal promise to gift or be joint owners often is insufficient to change owner.

For property with title papers (real estate or vehicles) or where there is a “listed owner” (like accounts), named owners are usually legal owners except in unusual cases.

But a person in life is free to make gifts or sell property even if it listed in a Will.

People should see what is owned by them and may be left to be handled by Will.

PROPERTY CAN BE OWNED IN WAYS THAT AFFECT GIFTING

Real estate and other property can be owned in ways that affect gifting:

a) “separate” or normal ownership is if just 1 person is listed on title, or in normal case, then an owner usually has power to sell or gift during life and to gift by Will;

b) “tenants in common” ownership may occur if several are listed on title, then each owner has a percent share (like 50%) they can sell or gift in life or gift by Will;

c) “joint tenant” or “joint tenancy with right of survivorship” occurs if multiple owners on title and this “joint” language is written on paperwork, then an owner has a partial share they must take legal action to sell or gift during life, but can’t gift by Will since on death it goes to other joint owners (some spouses especially in other states hold a house this way);

d) “tenants by the entirety” occurs if owners got property while married and papers use this language, then each owner (like with joint property) has a partial share they must take legal action to sell or gift during life, but can’t gift by Will since on death it goes to other joint owners (many spouses often hold a house this way);

e) a “life estate” occurs if title papers say this, then person can use a property for their life but can’t sell or gift in life or gift by Will since on death it goes to remainder owners;

f) “trust property” occurs if papers creates a trust and people transferred property into the trust, and then only a “trustee” can sell or gift trust property, and a Will has no effect.

FOR SPOUSES FLORIDA USES “SEPARATE PROPERTY” LAW

Florida is not a “community property” state (like California or Texas) where a spouse often owns half their spouse’s income and half of most purchases during marriage. Florida instead uses “separate property” law where each spouse usually owns 100% of their own income and things they buy during marriage. Frankly, in separate property states ownership can be very unequal between spouses (unless they divorce and a judge balances things). Usually only if

CHAPTER 7

FORM 2: LAST WILL AND TESTAMENT (GUARDIANS)

FORM 2 IS A WILL WITH GUARDIANS PARAGRAPH

Form 2 is a Will which is a helpful document done to control things after a person's death. Form 2 is like the Will in Form 1 but has a "Guardians" paragraph to name persons to if needed watch any minor child or manage any property or money of a minor under 18. Form 2 is for a person with a child under 18 or a person giving property or money to minors. The person writing a Will is called the "Testator".

WILL IN FORM 2 HAS BASIC LAYOUT WITH SEVERAL PARTS

The Will in Form 2 has a basic layout with several parts.

Right away in the Will there is a place for the person making the Will who is called the Testator to write his or her name and last county of residence in the state.

The 1st paragraph, "Gifts", has many spaces to use if wanted to write gifts of specific property, or general gifts of money or categories of things.

The 2nd paragraph, "Gift Lists", says gift lists people leave should be followed.

The 3rd paragraph, "Residue", has the helpful "residue clause" to give anything not given elsewhere to persons who are named in this paragraph.

The 4th paragraph, "Administration", has space to name a Personal Representative (also called an executor) to handle matters after the Will maker's death.

The 5th paragraph, "Guardians", lets one name a "Guardian Of The Person" to if needed care for children under 18, and lets one name a "Guardian Of The Property" to if needed manage and spend wisely on them a child's or other minor's property until 18.

The 6th paragraph, "Miscellaneous", has several sentences of legal language written to help avoid certain legal problems.

Finally, there is a place for the person doing the Will and 2 witnesses to sign. Please note, by signatures are spots for names of people to be written in by pen or computer.

RESIDUE CLAUSE HAS 2 PLACES TO NAME PERSONS

Please read earlier in this book about the residue clause. In a Will residue clause anything leftover not gifted earlier in a Will goes to those named here. This often is called a

“catch-all” or “left-over” clause. Many use a residue clause to gift most things as it has less legal risk and is easy (there is no need to describe things since anything leftover is gifted). The residue clause is fairly simple, and those named in the 1st space get things if alive when a Will maker dies, and if the 2nd space applies those named get things or if deceased their descendants take their share (children or grandchildren)

WILL IS SIGNED BEFORE 2 WITNESSES

To be valid a Will must be signed by a person before 2 witnesses who then also sign. Witnesses usually read to themselves the 1 paragraph they sign. Everyone should see each other sign in normal permanent pen or marker. Anyone of sound mind at least 18 can be a witness but it is best if witnesses aren't getting Will gifts, aren't felons, and aren't super old. Someone named personal representative (executor) or guardian can be a witness. No words need to be said but often a thing is said like, “My name is ____, and this is the Will I want to voluntarily make, and I want you 2 persons to be witnesses.”

KEEP COMPLETED WILL IN SAFE PLACE IT WILL BE FOUND

When completed a Will should be kept in a safe place it will be found within weeks of death, and some put it in a desk, filing cabinet, a safe (someone else should have access), or with a trusted person like spouse or executor. Someone can be told where a Will is. In Florida before a death a Will cannot be filed for safekeeping at court.

4. ADMINISTRATION. I name and appoint Gregory Henry Ford as Personal Representative of my Will and my estate (who also is called Executor).

5. MISCELLANEOUS. The following applies to this Will, my estate, and generally.

Survival. For Will gifts a beneficiary must survive to get a gift and survival is an absolute condition and anti-lapse laws or similar have no effect, but a named alternative beneficiary may take a gift for non-surviving persons (including “lineal descendants”).

Survivors Take Joint Gift. For gifts to several beneficiaries if any are dead their part goes to living beneficiaries in proportion to their shares, including for the residue, but not if there is a named alternate beneficiary to take the decedent’s share.

Gift Order. Priority of Will gifts of the same type is based on order they written.

Gift. Words “give” and “gift” also mean devise, bequest, grant, legacy or similar.

Informal. I request informal and unsupervised administration of my Will and estate.

Descendants. A gift including the residue to “lineal descendants” is “per stirpes”.

Unfilled Will. No unfilled or blank part is a mistake including in the residue clause.

Residue. The residue includes lapsed or failed gifts, inheritances owned, insurance paid to estate, and property with power of appointment or testamentary disposition.

Paying Debts. My executor has power to pay debts in time and manner and with property or money they find best, including not paying some debts if practicable.

Mortgage or Lien. I direct no debt with an encumbrance such as mortgage or lien should be paid, and if paid for some reason contribution is owed my estate and others.

Events During Life. No gift or other transfer made during life reduces or offsets any gift or part of this Will, unless expressly called a “loan” or “advancement”.

Items No Longer Held. A gift of property including real property that is no longer owned has no effect and a Will gift of such lapses without ademption or replacement.

Powers. Any personal representative or guardian of any type is given as much power, authority, and discretion that may be given by law, including without liability for change in value to sell, lease, assign, mortgage, invest, exchange, or transfer in any way property, settle claims for and against the estate or any person, and have power of sale over real property, with no need for any filing or inventory or act of court. If beneficiaries getting the same property disagree on use for property it may be sold and cash given.

No Bond. Any personal representative, executor, or guardian of any type serving under this Will or otherwise shall qualify and serve with no bond, surety, or other security.

Minors Gifts. For gifts to a minor my personal representative has discretion and power without court action to transfer property to a: minor, guardian of property for a

LAST WILL AND TESTAMENT

I, **John Edward Remington** of **Hillsborough** County, Florida, hereby make, publish, and declare this as my Last Will and Testament (called here my "Will"), and I hereby revoke any Wills and Codicils earlier made by me.

1. GIFTS. I give in this section these specific gifts and general gifts including of money to the following beneficiaries but only for those who survive to get the gifts to them.

I give my collection of guitars and music books to Ruth Wilson

I give a total of \$100,000 to 50% to Abraham Hill, 40% to Amy Amelia Hill, and 10% to Jane Smith.

I give \$3000 and my dog Reebo to Wanda Gina Soren.

I give 1987 Ford Truck to Frank Naldo my mechanic.

I give \$20,000 to Greg Best or if he fails to survive to his wife Mary Best.

I give \$500 to each of my many cousins.

I give \$1000 to St. Mary Angelica my church.

I give \$1500 to the Joy Food Kitchen in South Tampa, Florida.

I give \$300 to Timmy Hart my paperboy.

I give \$20,000 to Juanita Chuzappa my nurse.

I give all my tools and lumber to Frank Kent.

I give my Jetski and boat trailers to Danny Poppler.

2. GIFT LISTS. I may leave a list or other writing giving tangible personal property as allowed by Florida or other law, and I authorize any such list and make the gifts described. Gifts in a writing not found by 60 days after my death shall abate and be of no effect.

3. RESIDUE. I give the residue and remainder of my property and estate not already transferred by the preceding provisions of this Will, of any kind and nature and wherever located, whether now owned or later acquired, as follows:

a) to **Mary Sue Remington my wife** only if they survive me with those of these persons who survive taking the share of non-surviving persons, and

b) if none of these just named persons do survive I give this to

Jon Sam Remington and Vera Jill Remington my children or their lineal descendants which descendants shall take the share of their non-surviving relative.

**SAMPLE FILLED-OUT
FORM 7:
DO NOT RESUSCITATE ORDER**