

# Last Will and Testament of

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I, \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, revoke my former Wills and Codicils and declare this to be my Last Will and Testament.

## IDENTIFICATION OF FAMILY

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

The names of my children are \_\_\_\_\_. All references in this Will to "my children" are references to the above-named children and any children born to me or adopted by me after the signing of this Will.

The failure of this Will to provide for any distribution to my child(ren), \_\_\_\_\_, intentional.

## PAYMENT OF DEBTS AND EXPENSES

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

## DISPOSITION OF PROPERTY

Specific Bequests. I direct that the following specific bequests be made from my estate. However, such bequests (other than bequests, if any, to my spouse or my children) shall be made only if my spouse, \_\_\_\_\_, and my children do not survive me.

Digital Assets. My digital assets shall be distributed in accordance with Schedule A of this Will. For the purposes of this Will, digital assets shall mean electronic assets that are stored on my computers, electronic devices, or on any online account, as identified in Schedule A. Online accounts include, but are not limited to, social-networking sites, online backup services, servers, email accounts, photo and document sharing sites, financial and business accounts, domain names, virtual property, websites, and blogs. My functional document, titled, "Letter of Instructions" with associated websites, usernames, passwords, and related information is hereby incorporated by reference into this Will and shall be distributed to the Digital Executor designated in this Will.

My remaining tangible personal property shall be distributed to \_\_\_\_\_. If this beneficiary does not survive me, this property shall be distributed with my residuary estate.

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

\_\_\_\_\_ % - my spouse, \_\_\_\_\_. If my spouse does not survive me, this share shall be distributed proportionately to the other distributee(s) listed under this provision.

\_\_\_\_\_ % - my children in equal shares. If a child of mine does not survive me, such deceased child's share shall be distributed in equal shares to the children of such deceased child who survive me by right of representation. If a child of mine does not survive me and has no children who survive me, such deceased child's share shall be distributed in equal shares to my other children, if any, or to their respective children by right of representation. If no child of mine survives me, and if none of my deceased children are survived by children, this share shall be distributed to \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ % - my Trustee, to be retained, managed and distributed under the "Trust for Children" provision.

\_\_\_\_\_ % - \_\_\_\_\_, \_\_\_\_\_. If this person does not survive me, this share shall be distributed proportionately to the other distributee(s) listed under this provision.

## TRUST FOR CHILDREN

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

The provisions of this Trust also provide for the distribution of my residuary estate. If the Trustee is the beneficiary of any life insurance policy on my life, any pension plan or any other contract, the proceeds of such policy, plan or contract shall be treated by my Trustee as though received as a part of my residuary estate.

B. Use and Distribution. Until there is no living child of mine under the age of \_\_\_\_\_ years, the Trustee shall pay to any child of mine or descendant of any deceased child of mine, 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 and descendants of deceased children 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 to 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 under the age of \_\_\_\_\_ years, the Trustee shall divide the Trust into equal shares, one share for each then living child of mine, and one share for the then living descendants, collectively, of each deceased child of mine.

1. With respect to each share provided for a child of mine then living:
  - a. Because each child has attained the age of \_\_\_\_\_ years, each child shall have the right, by written request, to withdraw one-third in value of the remaining assets of such child's share then being held in trust.
  - b. Each child who has attained age \_\_\_\_\_ years, and each remaining child upon attaining such age shall have the right, by written request, to withdraw one-half in value of the remaining assets then being held in such child's share.
  - c. Each child who has attained age \_\_\_\_\_ years, and each remaining child upon attaining such age shall have the right, by written request, to withdraw the remaining assets then being held in such child's share, and if the child does so without the remaining assets, the Trust as to that share shall terminate.
  - d. The withdrawal rights described in paragraphs (a) and (b) shall be cumulative, so that if the child has already attained the age specified in paragraph (b) at my death, the child shall have the right to withdraw a total of two-thirds in value of the remaining assets then being held in that child's trust share. However, in the event that the child does not make a request for a distribution within six months after attaining eligibility to do so, the amount of such distribution shall not be distributed by the Trustee except as either (i) a part of the next succeeding distribution, or (ii) as provided in paragraph (e).
  - e. Prior to final distribution to each child, as provided in this section, the Trustee shall pay to each child such sums from the income or principal of that child's share as the Trustee deems advisable for such child's health, education, support, and maintenance. Any income not distributed shall be added to principal.
  - f. If a child of mine dies before receiving full distribution of such child's share, the remainder of such child's share shall be distributed by right of representation to such child's descendants, if any, or if none, by right of representation to my descendants. Each portion distributable to a descendant of mine for whom a share of this Trust is being held shall be distributed to the Trustee of that share and become a part of that share.
2. With respect to each share provided for the then living descendants, collectively, of a deceased child of mine, the trustee shall distribute that share by right of representation to the descendants of the deceased child.
3. If no child of mine survives to age \_\_\_\_\_ years, and if none of my children have surviving descendants, the Trustee shall distribute the remaining Trust assets in the manner set forth in the paragraph "No Surviving Descendants."

4. Upon the death of a trust beneficiary under the circumstances contemplated by this section ("Use and Distribution"), the Trustee, in the Trustee's discretion, may pay the expenses of last illness, funeral, and related expenses of such deceased beneficiary from Trust assets.

5. Whenever income or principal is to be used for the benefit of a person under the age of eighteen (18) years or a person who in the judgment of the Trustee is incapable of managing such person's own affairs, the Trustee may make payment of such property in any or all of the following ways:

- a. By paying such property to the parent, guardian, conservator, or other person having the care and control of such person for such person's benefit or to any authorized person as custodian for such person under the Uniform Transfers to Minors Act or equivalent legislation.
- b. By paying such property to the guardian, conservator, or other person having the care and control of any incapacitated person.
- c. By paying directly to any such beneficiary such sums as the Trustee may deem advisable as an allowance.
- d. By expending such property in such other manner as the Trustee in its discretion believes will benefit any such beneficiary.

C. No Surviving Descendants. If at any time before final distribution of any trust created under this Will, there is not in existence anyone who is, or might become, entitled to receive benefits under the foregoing provisions of this Will, then any portion of my trust or estate then remaining shall be paid over and distributed outright to my heirs-at-law, their identities and respective shares to be determined under the laws of the State of \_\_\_\_\_ when in effect, as if I had died intestate at the time fixed for distribution under this provision. If my heirs-at-law, their identities and respective shares to be determined under the laws of the State of \_\_\_\_\_ when in effect, as if I had died intestate at the time fixed for distribution under this provision.

\_\_\_\_\_ % to \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_.

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 payments 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 to 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 \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, as Co-Trustees (the "Trustee"). If one of the above nominees does not serve for any reason, I nominate \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, to be the replacement Trustee. If such person or entity does not serve for any reason, I nominate \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, as Co-Successor Trustees (the "Trustee"). If one of the above nominees does not serve for any reason, I nominate \_\_\_\_\_, \_\_\_\_\_, to be the replacement Co-Successor Trustee. If such person or entity does not serve for any reason, I nominate \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, as alternate Co-Successor Trustees (the "Trustee").

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

*Resignation, Incapacity, or Death of the Trustee.* Upon the resignation, incapacity, or death of the Trustee, \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_ are designated as successor Co-Trustees (the "Trustee"). 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.

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

*Successor Trustee.* If the Trustee resigns or ceases to serve for any reason, and if the successor Trustee designated in this document, if any, fails or ceases to serve as Trustee, then the beneficiaries to whom such notice of resignation is given shall designate a successor Trustee by written notice to the resigning Trustee within \_\_\_\_\_ 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.

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

### **PET CARE DIRECTIVES**

Notwithstanding any other provision of this Will, I further direct that:

Pet Caretaker. I give my following pet(s):

- My \_\_\_\_\_,

and any other animals which I may own as companion animals at the time of my death, to \_\_\_\_\_, presently residing at \_\_\_\_\_, with the request that he or she treat them as companion animals. If he or she is unable or unwilling to accept my animals, I give such animals to \_\_\_\_\_, presently residing at \_\_\_\_\_, with the request that he or she treat them as companion animals. If he or she is unable or unwilling to accept my animals, my Executor shall select an appropriate person to accept the animals and treat them as companion animals, and I give my animals to such person.

Pet Caretaker Funds. I direct my Executor to give \$\_\_\_\_\_ from my estate to the person who accepts my animals, and I request (but do not direct) that the funds be used for the care of my animals.

### **NOMINATION OF EXECUTOR**

I nominate \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, as Co-Executors (the "Executor"). If one (or both) of the above nominees does not serve for any reason, I nominate \_\_\_\_\_, of \_\_\_\_\_, as replacement Co-Executor (or sole Executor).

### **NOMINATION OF DIGITAL EXECUTOR**

I nominate \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, as my Digital Co-Executors. If one (or both) of the above nominees does not serve for any reason, I nominate \_\_\_\_\_, of \_\_\_\_\_, to serve as replacement Digital Co-Executor (or sole Digital Executor). For the purposes of this Will, Digital Executor shall mean a designated executor assigned to manage the responsibilities for my digital assets after death.

### **NOMINATION OF GUARDIAN**

Should it become necessary to appoint a guardian of the person of a minor child, I nominate \_\_\_\_\_ and \_\_\_\_\_, of \_\_\_\_\_, to serve as Co-Guardians of my surviving children who are minors at the time of my death. If the above nominees are unable to serve as Guardians together, I nominate \_\_\_\_\_

\_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, to serve as the Guardian. No guardian shall be required to file or furnish any bond, surety or other security in any jurisdiction.

## EXECUTOR AND TRUSTEE POWERS

**Power to Administer Estate.** My Executor, with respect to my estate, and my Trustee with respect to my trust, 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: to identify, gather, value, secure, manage and distribute assets, to maintain records, to settle and wind up business affairs, to pay just debts, to file necessary tax returns, to redirect mail, to cancel services, to establish trusts, and to carry out my wishes as set forth in this Will.

**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.

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

**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 and 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, when though not otherwise a legal investment for trust funds under the laws and statutes of the United States or the state in which this instrument is administered.

**Retain Assets.** To retain any asset, including unrescued 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.

**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 that may appear to be proper, and to execute all instruments necessary to effect such authority.

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

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

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

**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.

**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.

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

**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.

**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.

*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.

*Compensation.* To receive reasonable compensation for their services under this Will and be exonerated from and to pay all reasonable expenses and charges of the estate and trust.

*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 or to provide for the needs of the beneficiaries and their families.

*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.

*Independent 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.

## DIGITAL EXECUTOR POWERS

Digital Executor. My Digital Executor, in addition to the powers and authority granted by law or necessary or appropriate for proper administration, shall have the right and power to manage, distribute, and/or terminate my digital assets in accordance with the Letter of Instructions incorporated by reference into this Will, without order of court and without notice to anyone. My Digital Executor's powers shall include, but not be limited to, the power to access, download, and backup digital assets, to convert my digital assets to access any and all devices as necessary to manage digital assets, to clear computer caches and to delete files. The Digital Executor shall also:

*Standard of Care.* Manage, distribute, and/or terminate my digital 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 digital assets, considering the probable safety of their digital assets.

*Employ Professional Assistance.* Employ and compensate counsel and other persons deemed necessary by the Digital Administrator for proper administration of my digital assets.

*Delegation Authority.* Delegate authority when such delegation is advantageous to the estate or to the management, distribution and/or termination of my digital assets.

*Duration of Powers.* Continue to exercise the powers provided in this Article notwithstanding the termination of my estate until all the digital assets of the estate have been distributed.

*Compensation.* Receive reasonable compensation for their services under this Will and be exonerated from and to pay all reasonable expenses and charges of the estate.

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

## SPECIAL DIRECTIVES

I hereby state, that in addition to the directives and bequests as set forth in this Will, it is my desire and wish to include the following special directives and last wishes: \_\_\_\_\_

### MISCELLANEOUS PROVISIONS

**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.

**Thirty Day Survival Requirement.** For the purposes of determining the appropriate distribution under this Will, no person shall be deemed to have survived me unless such person is also surviving on the thirtieth day after the date of my death.

**Common Disaster.** If my spouse and I die under circumstances such that there is no clear or convincing evidence as to the order of our deaths, or if it is difficult or impractical to determine which person survived the death of the other person, it shall, for the purpose of distribution of my life insurance, property passing under any trust or other contracts, jointly, and property passing under this Will, be conclusively presumed that I predeceased my spouse, and notwithstanding any other provision of this Will, my spouse (or my spouse's estate as the case may be) shall receive the distribution to which my spouse would otherwise be entitled to receive without regard to a survivorship requirement, if any.

**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, and my 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.

**Compensation.** The Executor is entitled to receive reasonable compensation for their services under this Will and be exonerated from and to pay all reasonable expenses and charges of the estate and trust.

**Intentional Exclusion.** The failure of this Will to provide for any contribution to the following person(s) or organization(s) is intentional: \_\_\_\_\_

**Beneficiary Disputes.** If any bequest requires that the bequest be distributed between or among two or more beneficiaries, the specific items of property arising 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 \_\_\_\_\_, \_\_\_\_\_.

Testator Signature: \_\_\_\_\_

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 his/her 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: \_\_\_\_\_

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

City: \_\_\_\_\_

State: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

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

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

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

City: \_\_\_\_\_

State: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

SAMPLE



**Schedule A**

**Name of Each Digital Asset and Digital Executor**

Name of Digital Asset:

\_\_\_\_\_

Name of Co-Digital Executor: \_\_\_\_\_, City: \_\_\_\_\_, State: \_\_\_\_\_

Name of Co-Digital Executor: \_\_\_\_\_, City: \_\_\_\_\_, State: \_\_\_\_\_

SAMPLE

**Letter of Instructions  
Specific Bequests Digital Assets**

Name of Digital Asset: \_\_\_\_\_

Access Information:

Where to Access: \_\_\_\_\_

Username: \_\_\_\_\_

Password: \_\_\_\_\_

Additional Information: \_\_\_\_\_

SAMPLE