

WILL AND TRUST PROVISIONS: This document contains a bequest of an extended usufruct to a spouse, a bequest of naked ownership, bequests of particular and conjoint legacies, a common accident provision, a survival requirement, a waiver of collation, an appointment of an executor, provisions for a trust created at death, and provisions for bequest of a tax exemption equivalent.

Bequest of Extended Usufruct to Spouse:

I give and bequeath a lifetime usufruct without bond over all of the property of which I die possessed, movable and immovable, separate and community, and of every nature whatsoever, including all mineral rights, to my husband, \_\_\_\_\_ (Husband).

Bequest of Naked Ownership Subject to Usufruct:

Subject to the usufruct granted herein to \_\_\_\_\_ (Usufructuary), I give and bequeath all of the property of which I die possessed, movable and immovable, separate and community, and of every nature whatsoever to my descendants by roots in being at the time of my death. My only children at the present time are \_\_\_\_\_ and \_\_\_\_\_, but in the event that I have additional children, they shall share in the naked ownership of my property as provided above.

Particular Legacy of Cash (Net):

I give and bequeath to \_\_\_\_\_ (Legatee Name) the sum of \_\_\_\_\_ (\$\_\_\_\_\_) in cash, said sum to be paid to \_\_\_\_\_ (him/her) free and clear of any taxes (including Louisiana Inheritance Taxes), charges or expenses of any kind, said sum to be disbursed in full as quickly as possible after my death.

COMMENT: This provision has the effect of leaving a larger portion of the estate to the legatee than the cash sum set out, because by its nature the legacy includes such additional amounts as are necessary to pay for the legatee's share of taxes, debts and charges. The net effect of such a provision is usually to reduce the residual estate by this excess amount.

Particular Legacy:

I give to \_\_\_\_\_ (Legatee), my \_\_\_\_\_ (Describe)

Conjoint Legacy:

I give to \_\_\_\_\_ (Legatee 1) and \_\_\_\_\_ (Legatee 2), my \_\_\_\_\_ (Describe), jointly and with right of accretion.

Residuary Bequest:

I give to \_\_\_\_\_ (Legatee), all of my property not disposed of in the bequests set forth above.

Common Accident:

Should I die together with any legatee in a common accident or under circumstances in which it is unclear who survived, I shall be presumed the survivor.

Survival Requirement:

In the event that any person named as a legatee herein fails to survive me by thirty days, this will shall be interpreted as if that person had predeceased me.

Waiver of Collation:

Gifts made during my lifetime to any of the above named legatees shall in no way be charged against or in any way used to reduce his or her inheritance as set out above, and each such lifetime gift shall be considered an "extra portion" and not subject to collation.

Appointment of Executor:

I appoint \_\_\_\_\_ (Executor Name), my \_\_\_\_\_ (Relationship) \_\_\_\_\_ (Executor or Executrix) of my estate, with full seizin and without bond.

COMMENT: A testamentary executor is not required to furnish security unless made to do so under special circumstances (see Code of Civil Procedure articles 3153, 3154, 3154.1 and 3155). In the absence of a provision either setting the amount of the executor's fee or declaring that there will be no fee or an agreement between the heirs and legatees and the executor, the executor's fee is set by law at 2.5% of the amount of the inventory.

Trust to Take Effect at Death:

(1) I hereby create a trust, to be called "\_\_\_\_\_ TRUST" ("the trust") subject to the following:

(A) I hereby create "\_\_\_\_\_ TRUST" and I appoint \_\_\_\_\_ Trustee of the trust. In the event that \_\_\_\_\_ (Trustee) is or becomes unwilling or unable to serve as Trustee, I appoint \_\_\_\_\_ (Successor) as successor Trustee.

(B) I give and bequeath unto the trust \_\_\_\_\_ (Trust Property).

(C) The sole beneficiaries of principal and income shall be \_\_\_\_\_ (Beneficiaries).

(D) The Trustee shall manage, invest, and reinvest the trust property for the benefit of the beneficiaries herein designated. In administration of the trust, the Trustee shall have all of the powers which are conferred upon trustees generally by the Louisiana Trust Code (La. R.S. 9:1721 et seq.) and other pertinent laws of the State of Louisiana, it being my intention to give the Trustee the broadest and most complete power and authority permitted by law, subject only to such rules and restrictions as may be contained herein.

(E) As to each beneficiary and the property left to that beneficiary in trust, the trust shall end at the twenty-first birthday of the beneficiary, at which time the beneficiary will receive the his or her share of the trust corpus, free of trust.

(F) Each beneficiary shall be paid, on a quarterly basis, all income accrued on that beneficiary's share of the trust corpus.

(G) The Trustee is authorized and instructed to distribute and deliver to each beneficiary the corpus and accumulated income belonging to that beneficiary on or after that beneficiary's twenty-first birthday. Should any beneficiary die before reaching the age of twenty-one, his or her share shall belong to his or her legal heirs.

(H) The Trustee is authorized and instructed to distribute to any beneficiary that portion of his or her share of the trust corpus as may be necessary in the following cases:

(i) Should any emergency arise seriously threatening the health or safety of that beneficiary, such sum as may be necessary to meet such emergency may be expended; or

(ii) Should the Trustee determine that such expenditures are necessary to properly support and educate that beneficiary, sums may be spent as may be necessary to meet such requirements.

Any distribution of trust corpus shall be chargeable against the recipient's portion of said corpus, thus reducing the principal on which future income will be earned.

(I) No Trustee named in this instrument shall be required to furnish bond of any kind. Trustees shall be required to render to the beneficiaries only such accountings as are required by law.

(J) The Trustee is authorized to make payment of reasonable trust expenses out of trust income, expenses to be apportioned according to the beneficiaries' respective interests in the trust corpus.

(K) The Trustee, and any successor Trustee, shall be entitled to compensation in such amount as is deemed reasonable by the appropriate court, such compensation to be paid as an expense of the trust.

(2) In the event that one or more of the trust beneficiaries reaches the age of twenty-one before my death or before my succession representative can arrange for the placing of the assets of my estate in the trust, then the beneficiary who has reached the age of twenty-one years shall inherit his or her share in my estate free of the trust management set out above, but the trust shall operate, as outlined above, as to any beneficiary who has not reached the age of twenty-one.

**Bequest of Exemption Equivalent:**

(1) References made hereafter to the "exemption equivalent" refer to the "exemption equivalent" available to my estate by reason of application of the unified credit allowed under §2010 of the Internal Revenue Code. Such "exemption equivalent" is presently \$600,000. If the current law should change and such "exemption equivalent" also changes, such changes shall be taken into account in computing the "exemption equivalent" for purposes of the provisions of this will. The amount of this "exemption equivalent" for purposes of the bequest of "PARCEL ONE" more fully described hereafter, shall be reduced by (1) an amount equal to the federal estate tax value of any property includable in my taxable estate for federal estate tax purposes which passes or has passed by reason of my death to any person other than my wife, and (2) the amount by which such "exemption equivalent" has been or may be reduced by reason of any gifts made by me during my lifetime.

(2) I expressly direct that the \_\_\_\_\_ (Executrix or Executor)

of my estate pay all debts and charges that may be owed by my estate, and then divide my estate (being all of my property of which I die possessed) into two parcels herein referred to as "Parcel One" and "Parcel Two". Parcel One shall be made up of an undivided interest in my estate having a total value equal to the "exemption equivalent" as defined above. Parcel Two shall be made up of the remainder of my estate.

(3) I give and bequeath all of the property in Parcel One to my \_\_\_\_\_ (number of children) children, \_\_\_\_\_ (Children's names), in equal portions.

(4) I give and bequeath all of the property in Parcel Two to my \_\_\_\_\_ (number of children) children, \_\_\_\_\_ (Children's names), in equal portions, subject to a lifetime usufruct in favor of my wife, \_\_\_\_\_.

(5) I give and bequeath to my wife, \_\_\_\_\_, a usufruct for life, with full seizin and without bond, over all of the property in Parcel Two.

COMMENT: Before using any type of "exemption equivalent" language, a CPA or tax specialist should be consulted. Each case is different. This kind of a provision is often used in testaments leaving the "exemption equivalent" to one group (example children), and the remainder to a spouse who can elect to receive it as a bequest qualified for the "marital deduction" provisions of the federal estate tax. The example given here is a simple version of the "exemption equivalent" definition.