

## **MONTANA WILL INSTRUCTIONS**

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1. This Will is designed to be completed on your computer. To do so, use your mouse and click on each field which will be highlighted in gray. This will replace the gray with the words you type.

Example: \_\_\_\_\_ [1] will become JOHN DOE.

If you ordered and received this Will in hard copy, you may also use these instructions to complete the Will, leaving the reference numbers, and placing the names, etc you desire next to the field numbers.

2. The Will contains Articles which cover various matters. The information below is designed to assist you in completing the fields contained in the articles of the Will.

### 3. Article / Field Completion Instructions.

Field [1]	-	Your Name.
Field [2]	-	Your Name.
Field [3]	-	Your County of Residence.

### **ARTICLE ONE**

This article allows you to specify your current marital status and to name all children you may have and their date of birth.

Field [4]	-	Double click proper box to select marital status.
Fields [5-10]	-	Type the names and birth dates of all children, if applicable. If you have no children, leave blank.

### **ARTICLE THREE**

This article is for you to specify specific property to go to a specific person. If you do not leave any, type none and delete the fields.

Field [11]	-	Type Name.
Field [12]	-	Address.
Field [13]	-	Relationship.
Field [14]	-	Describe the property to go to this person.
Field [15]	-	Type Name.
Field [16]	-	Address.
Field [17]	-	Relationship.
Field [18]	-	Describe the Property.
Field [19]	-	Type Name.
Field [20]	-	Type Address.

- Field [21] - Relationship.
- Field [22] - Describe the Property.
- Field [23] - Type Name.
- Field [24] - Type Address.
- Field [25] - Relationship.
- Field [26] - Describe the Property.

#### **ARTICLE FOUR**

This article is for you to leave your homestead, if you have one on the date of death to persons designated. You may choose to bequest your homestead to your spouse, your children, or allow your primary residence to pass under Article Five.

- Field [27] - Complete this field only if you want to leave your homestead to your spouse. Remember to sign your name under this provision if selected.
- Field [28-30] - Complete these fields only if you want to leave your homestead to your child(ren). Remember to sign your name under this provision if selected.
- Field [31] - Complete this field only if you want to leave your homestead to another individual(s) other than your spouse or children or if you have no spouse or children. Remember to sign your name under this Provision if selected.
- Field [32] - Double click on this box to select this provision only if you want your primary residence to pass under Article Five of this Will. Remember to sign your name under this provision if selected.

Note: If your home is jointly owned with another and held as joint tenants with rights of survivorship, the home will pass to the survivor and will not be controlled by your will.

#### **ARTICLE FIVE**

This article is for you to leave all the rest and remainder of your property and any special items you listed in Article Three. This article gives you the following options as to the disbursement of the remainder of your property: Bequest to child(ren), bequest to spouse, bequest to another individual(s) or organization(s).

- Field [33-35] - Complete these fields only if you want the remainder of your property to pass to your child(ren). Remember to sign your name under this provision if selected.

- Field [36] - Complete this field only if you want the remainder of your property to pass to your spouse. Remember to sign your name under this provision if selected.
- Field [37] - Complete this field only if you want the remainder of your property to pass to another individual(s) other than your spouse or children or if you have no spouse or children. Remember to sign your name under this provision if selected.

### **ARTICLE SIX**

This article concerns property which is to vest in a trustee for a minor beneficiary. This section should be completed only if you have minor children.

- Field [38] - Enter age of minor beneficiary requiring the assistance of a trustee.
- Field [39] - Enter age at which beneficiary will receive distribution of trust principal and income.
- Field [40] - Enter age of beneficiary at which the named trustee is required to distribute remaining trust property.
- Field [41] - Enter name of trustee.
- Field [42] - Enter name of alternative trustee.
- Field [43] - Enter name of guardian for minor children.

### **ARTICLE SEVEN**

This article requires that you name a personal representative and a successor personal representative.

- Field [44] - Enter name of your personal representative.
- Field [45] - Enter name of your successor personal representative.

### **ARTICLE TEN**

Article ten contains construction intentions and miscellaneous provisions. Be sure to check the box appropriate box concerning whether you want to be deemed to have died before or after your spouse in the event you die in a common disaster with your spouse.

All other blanks in the Will are typically completed by hand, such as the names of the witnesses, day, month and year executed, etc.

Once you have completed the Will, double-check all entries and then print. The Will should be signed by you in front of two witnesses, not related to you. Please sign all pages of the Will in the places designated.

The self-proving affidavit is used to prove the Will and make the Will subject to probate. If the affidavit is not completed now, someone will have to locate the witnesses after your death and obtain an affidavit. Therefore, it is best to sign the Will in the present of two witnesses AND a notary public so that the affidavit can be completed by the Notary.

You should keep your Will in a safe place once executed. It is also recommended that you give a copy to your executor or other person as additional proof of execution.

## **ADDITIONAL INFORMATION ABOUT YOUR WILL FORM**

This section will briefly explain some of the articles of your will and provide other information. Articles of the Will which are basically self-explanatory are not discussed here. In addition, information which is already provided in the instructions above is not repeated.

**First Paragraph:** The first paragraph of the Will, provides your name, residence information and provides that all prior Wills, if any, are revoked since you have now made a new Will.

**Article Three:** Some people have specific property that they desire to leave to a specific person, such as a ring or antique. This Article is for you to leave such property. You do not have to name specific property and may simply state none if no property is to be left under this Article.

**Article Six:** This Article is for you to name a Trustee for a minor beneficiary. The person named should be an adult. Complete this section only if you have minor children.

**Article Seven:** This Article is for you to name a Personal Representative. The person named should be an adult.

**Article Eight:** If not waived, some Courts will require your Personal Representative post a bond, and file an inventory, accounting and/or appraisal. All this can be costly and time consuming. This Article states your intention that your Personal Representative not be required to post a bond or file an inventory or accounting.

**Article Nine:** This Article sets forth powers of your Personal Representative and is designed to give broad powers without the requirement that Court approval be sought for action by the Representative to the extent permitted by the laws of your State.

**Article Ten:** This article sets forth some legal construction intentions to clarify some of the issues which may arise.

## BASIC INFORMATION

**What is a Will?** A Will is a document which provides who is to receive your property at death, who will administer your estate, the appointment of trustees and guardians, if applicable, and other provisions.

**Who may make a Will?** Generally, any person 18 years or older of sound mind may make a Will. (Some states allow persons under 18 to make a Will)

**What happens if I die without a Will?** If you die without a will you are an intestate. In such a case, state laws govern who receives your property. These laws are called "intestate succession laws". If you die without a Will, the Court decides who will administer your estate. Generally, it is more expensive to administer an estate of a person who died without a Will, than a person who dies with a Will.

### General

When making a Will you need to consider who will be named as your personal representative or executor to administer your estate, who you will name as guardian and trustee of minor children if your spouse does not survive you and who will receive your property. You should also consider tax issues. The person appointed as executor or administrator is often your spouse, but you should also name an alternate, in case your spouse predeceases you. The person you name should be a person you can trust and who will get along with the beneficiaries named in the Will.

In the event your spouse predeceases you, the guardian you name will have actual custody of your minor children unless a court appoints someone else. The trustee you appoint to administer a trust you established would be in charge of the assets of the trust for the benefit of the minor beneficiaries.

Generally, a Will must be signed in the presence of at least two witnesses (three for Vermont) who also sign the Will. A notary public will also need to sign if the Will contains a self-proving affidavit. Generally, a self-proving affidavit allows the Will to be admitted to probate without other evidence of execution.

**Joint Property:** Many people do not understand that joint property may pass outside your Will and also sometimes assume that it will pass through their Will. They do not understand the significance of joint ownership. The issue is common in the following areas, provided as examples:

**(a) Real Estate:** Often, a husband and wife will own real estate as joint tenants with rights of survivorship. If one party dies, the surviving party receives the property regardless of what the Will provides. This is common and generally acceptable. However, if this is not your desire you should change the ownership of the property to tenants in common or other form of ownership. If you own real estate as tenants in common, then you may designate who will receive your share of the property at your death. This issue can be a problem when uninformed persons take title to real estate as joint tenants with rights of survivorship but really intended to leave their share to, for example, children of a prior marriage.

**(b) Bank Accounts/Certificates of Deposit, Stock, Retirement Plans, IRA's and other type Property:**

The same ownership as real estate can be made of these investments. In fact, many Banks routinely place Bank accounts and Certificates of Deposit in the joint tenant with right of survivorship form of ownership if more than one person is on the account or CD, without advising you of the consequence of same. In situations where the persons are husband and wife and there is no issue or concern over divorce or children from previous marriages, this may be the best course of action. However, with divorce on the rise, premarital agreements and multiple marriages being common, the parties may be doing something that was not their intent. Another common problematic situation is if a parent has more than one child but only one child resides in the hometown of the parent. The parent may place the name of the child who resides there on all accounts, CD's and other investments for convenience reasons and establish a joint tenant with right of survivorship situation without realizing that only that child will be entitled to those assets at the parent's death. Simply put, you should be aware when you acquire an asset or investment

exactly how it is titled.

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For additional information, see the Law Summary and Information and Preview links in the search results for this form. A Definitions section is also linked on the Information and Preview page.

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**Your Will starts on the next page.**

**LAST WILL AND TESTAMENT OF**

\_\_\_\_\_ [1]

**BE IT KNOWN THIS DAY THAT,**

I, \_\_\_\_\_ [2], of \_\_\_\_\_ [3] County, Montana, being of legal age and of sound and disposing mind and memory, and not acting under duress, menace, fraud, or undue influence of any person, do make, declare and publish this to be my Will and hereby revoke any Will or Codicil I may have made.

**ARTICLE ONE  
Marriage and Children**

(Double click box to select and mark as checked)

[Field 4]

I am:

- (a)  Single (not married) with no children
- (b)  Single (not married) with minor children.
- (c)  Married with no children.
- (d)  Married with minor children.
- (e)  Married with adult children.
- (f)  Other: \_\_\_\_\_

If I have children, their names and date of birth are:

Name: \_\_\_\_\_ [5]      Date of Birth: \_\_\_\_\_ [6]  
 Name: \_\_\_\_\_ [7]      Date of Birth: \_\_\_\_\_ [8]  
 Name: \_\_\_\_\_ [9]      Date of Birth: \_\_\_\_\_ [10]

**ARTICLE TWO  
Debts and Expenses**

I direct my Personal Representative to pay all costs and expenses of my last illness and funeral expenses. I further direct my Personal Representative to pay all of my just debts that may be probated, registered and allowed against my estate. However, this provision shall not extend the statute of limitations for the payment of debts, or enlarge upon my legal obligation or any statutory duty of my Personal Representative to pay debts.

**ARTICLE THREE  
Specific Bequests of Real and/or Personal Property**

I will, give and bequeath unto the persons named below, if he or she survives me, the Property described below:

Name/Address/Relationship	Property Description
[11] [12] [13]	[14]
[15] [16] [17]	[18]

Signed by Testator/Testatrix: \_\_\_\_\_

[19] [20] [21]	[22]
[23] [24] [25]	[26]

[LIST OR STATE NO PROPERTY LEFT UNDER THIS ARTICLE]

In the event I name a person in this Article and said person predeceases me, the bequest to such person shall lapse and the property shall pass under the other provisions of this Will. In the event that I do not possess or own any property listed above on the date of my death, the bequest of that property shall lapse.

**ARTICLE FOUR  
Homestead or Primary Residence**

I will, devise and bequeath all my interest in my homestead or primary residence, if I own a homestead or primary residence on the date of my death that passes through this Will, to my spouse, \_\_\_\_\_ [27], if he or she survives me. If he or she does not survive me, then my homestead or primary residence shall pass under the residuary clause of this Will. Signed if Selected: \_\_\_\_\_

OR

I will, devise and bequeath all my interest in my homestead or primary residence, if I own a homestead or primary residence on the date of my death that passes through this Will, to my children, \_\_\_\_\_ [28] and \_\_\_\_\_ [29] and \_\_\_\_\_ [30],  
equally, per stirpes.  
Signed if Selected: \_\_\_\_\_.

OR

I devise and bequeath all my interest in my homestead to: \_\_\_\_\_ [31]  
Signed if Selected: \_\_\_\_\_.

OR

My Primary residence shall pass under Article Five. [Field 32]  
Signed if Selected: \_\_\_\_\_.

**ARTICLE FIVE  
All Other Property of Every Kind**

I will, devise, bequeath and give all of my property and estate of every kind and character, including, but not limited to, real and personal property in which I may have an interest at the date of my death and which is not otherwise effectively disposed of as follows:

- (a)  To my children \_\_\_\_\_ [33] and \_\_\_\_\_ [34] and \_\_\_\_\_ [35], equally, per stirpes. If one of my

Signed by Testator/Testatrix: \_\_\_\_\_

children shall predecease me, then the equal share set apart for that deceased child shall instead be distributed to his or her descendants, per stirpes. If one of my children shall predecease me leaving no descendants surviving, then the equal share set apart for that deceased child shall instead be distributed to my other child, or if that child has also predeceased me, then to his or her descendants, per stirpes.

Signed if Selected: \_\_\_\_\_.

(b)  To my spouse, \_\_\_\_\_ [36].  
Signed if Selected: \_\_\_\_\_.

(c)  To \_\_\_\_\_ [37]  
Signed if Selected: \_\_\_\_\_.

### ARTICLE SIX

#### Property To Vest In Trustee for Child Beneficiary

(Complete only if you have minor children)

If I have children and any of my children are under the age of \_\_\_\_\_ [38] years of age on the date of my death, then I direct that my Personal Representative shall transfer, assign and deliver over to my Trustee, named below, such beneficiary's share of my estate and the objects of property described herein. I direct my Trustee to hold said Beneficiaries share of my estate and administer the assets of the Trust for the use and benefit of the Beneficiaries for the purpose of providing for their health, education and general welfare in accordance with their accustomed standard of living as much as is possible, considering the value of the Trust property and their other sources of income. The Trustee, may in his or her discretion, distribute to or for the benefit of the named Beneficiaries, such portions of the income and principal of the Trust as he or she in his or her sole discretion shall determine to be necessary to accomplish the purposes of this Trust. The Trustee may make such distributions as often or as seldom as he or she may determine in his or her sole discretion without the necessity of any court authority or approval, this being a private trust. As each Beneficiary herein reaches the age of \_\_\_\_\_ [39] years, the Trustee shall distribute to said beneficiary his or her share of the trust principal and income as of the distribution date. When the youngest Beneficiary reaches the age of \_\_\_\_\_ [40] years, the Trustee shall distribute all of the remaining Trust property including principal and accumulated income to the Beneficiary and this Trust shall terminate. In making said distributions, the Trustee may make distributions in kind and shall have the sole discretion as to valuation of the Trust property in determining and apportioning distributions among the Beneficiaries.

I appoint \_\_\_\_\_ [41], or if the appointee fails to qualify or cease to act, I appoint \_\_\_\_\_ [42], as Trustee of the Trust provisions of this Will to serve in said capacity with all the powers during the administration of the Trust as are granted to Trustees under Montana law including the power to sell any of the real or personal property of the Trust for cash or on credit or to mortgage it or to lease it, all to be exercised without Court order. The Trustee named herein shall also have all powers as are granted to my Personal Representative under the provisions of this Will during the administration of this private Trust.

In the event that there is need for a guardian for my minor children, if any, I appoint

Signed by Testator/Testatrix: \_\_\_\_\_

\_\_\_\_\_ [43], as Guardian of said minor children.

Neither the principal nor the income of any Trust provision contained in this Will nor any part of same shall be liable for the debts of any Beneficiary hereunder, nor shall the same be subject to seizure by any Creditor of any Beneficiary, and no Beneficiary therein shall have any power to sell, assign, transfer, encumber, or in any manner to anticipate or dispose of his or her interest in the Trust fund, nor any part of same nor the income produced from said fund nor any part of same.

#### **ARTICLE SEVEN**

##### **Appointment of Personal Representative, Executor or Executrix**

I hereby appoint \_\_\_\_\_ [44], as Personal Representative of my estate and this Will. In the event my Personal Representative shall predecease me, or, for any reason, shall fail to qualify or cease to act as my Personal Representative, then I hereby appoint \_\_\_\_\_ [45] to serve as successor Personal Representative of my estate and Will.

The term "Personal Representative", as used in this Will, shall be deemed to mean and include "Personal Representative", "Executor" or "Executrix".

#### **ARTICLE EIGHT**

##### **Waiver of Bond, Inventory, Accounting, Reporting and Approval**

My Personal Representative and successor Personal Representative shall serve without any bond, and I hereby waive the necessity of preparing or filing any inventory, accounting, appraisal, reporting, approvals or final appraisal of my estate.

#### **ARTICLE NINE**

##### **Powers of Personal Representative, Executor and Executrix**

I direct that my Personal Representative shall have broad discretion in the administration of my Estate, without the necessity of Court approval. I grant unto my Personal Representative, all powers that are allowed to be exercised by Personal Representatives by the laws of the State of Montana, including, but not limited to, any "Uniform Trustees' Powers Law," and/or "Probate Code" adopted by the State of Montana.

All authorities and powers granted unto my Personal Representative shall be exercised from time to time in her or his sole and absolute discretion and without prior authority or approval of any Court, and I intend that such powers be construed in the broadest possible extent.

#### **ARTICLE TEN**

##### **Construction Intentions and Misc. Provisions**

It is my intent that this Will be interpreted according to the following provisions:

1. The masculine gender shall be deemed to include the feminine as well as the neuter, and vice versa, as to each of them; the singular shall be deemed to include the plural, and vice versa.
2. The term "testator" as used herein is deemed to include me as Testator or

Testatrix.

3. This Will is not a result of a contract between myself and any beneficiary, fiduciary or third party and I may revoke this Will at any time.

4. If I am married, then, in the event I die in a common disaster with my spouse, I direct that I be deemed to have  died before  died after, my spouse.

5. If any part of this Will shall be declared invalid, illegal, or inoperative for any reason, it is my expressed intent that the remaining parts shall be effective and fully operative and it is my intent that any Court so interpreting same construct this Will and any provision in favor of survival.

I direct that this Will and the construction thereof shall be governed by the Laws of the State of Montana.

I, \_\_\_\_\_, having signed this Will in the presence of \_\_\_\_\_ and \_\_\_\_\_ who attested it at my request on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ (address), declare this to be my Last Will and Testament.

\_\_\_\_\_  
Testator/Testatrix

The above and foregoing Will of \_\_\_\_\_ was declared by \_\_\_\_\_ in our view and presence to be his/her Will and was signed and subscribed by the said \_\_\_\_\_ in our view and presence and at his/her request and in the view and presence of \_\_\_\_\_ and in the view and presence of each other, we, the undersigned, witnessed and attested the due execution of the Will of \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

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

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

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

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

\_\_\_\_\_  
Telephone No. \_\_\_\_\_

\_\_\_\_\_  
Telephone No. \_\_\_\_\_

Signed by Testator/Testatrix: \_\_\_\_\_

**Montana Self Proving Affidavit**

I, \_\_\_\_\_, the Testator/Testatrix, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ 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, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator/Testatrix  
Typed Name: \_\_\_\_\_

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/Testatrix signs and executes this instrument as her or his Last Will and that she or he signs it willingly, that each of us, in the presence and hearing of the Testator/Testatrix, hereby signs the will as witness to the Testator's/Testatrix's signing, and that to the best of our knowledge the Testator/Testatrix is 18 years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

State of Montana

County of \_\_\_\_\_

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by \_\_\_\_\_, the Testator/Testatrix, and subscribed and sworn to before me by the above-named witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(SEAL)

(Signed) \_\_\_\_\_

\_\_\_\_\_  
(Official capacity of officer)