

SOUTH DAKOTA WILL INSTRUCTIONS
Married with Minor Children

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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

Field [4] - Type the name your spouse.
Fields [5] – [12] Type the name of your children.

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 [13] - Type name.
Field [14] - Type street address.
Field [15] - Additional Address line.
Field [16] - City, State, Zip.
Field [17] - Relationship.
Field [18] - Describe the property to go to this person.
Field [19] - Type name.
Field [20] - Type street address.
Field [21] - Additional Address line.
Field [22] - City, State, Zip.
Field [23] - Relationship.
Field [24] - Describe the property

- Field [25] - Type name.
- Field [26] - Type street address.
- Field [27] - Additional Address line.
- Field [28] - City, State, Zip.
- Field [29] - Relationship.
- Field [30] - 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.

- Field [31] - Type name of your spouse.

ARTICLE FIVE

This article is for you to leave all the rest and remainder of your property except your homestead and any special items you listed in Article Three.

- Field [32] - Type the name of your spouse.

ARTICLE SIX

This article is to provide an alternate distribution of the rest and remainder of your property should your spouse predecease you and the provisions for distribution contained in Article Five cannot be carried out.

- Field [33] Type the name of your child(ren).
- Fields [34]-[36] Omitted

ARTICLE SEVEN

This article provides for the establishment of a trust for the benefit of minor beneficiaries.

- Fields [37] Enter the age below which you desire that minor beneficiaries property be placed in trust.
- Fields [38-41] Enter age at which property may be released from trust.

ARTICLE NINE

This article provides for the appointment of a Trustee and Successor Trustee.

- Field [42] Type the name of the Trustee.
- Field [43] Type the name of the Successor Trustee.

ARTICLE TEN

This article provides for the appointment of a guardian of minor children

- Field [44] Type the name of your spouse.
- Field [45] Enter the age below which you desire a guardian be appointed for your children.
- Field [46] Type the name of the guardian.

ARTICLE ELEVEN

This article is for you to name your personal representative. This must be an adult and can be your spouse.

- Field [47] - Type name of Personal Representative.
- Field [48] - Type name of successor Personal Representative.

ARTICLE FOURTEEN

This article provides instructions relating to the interpretation of your will.

- Field [49] - Type the name of your spouse. This clause is a common disaster clause and provides whose Will will control if you both die in a common disaster.

ARTICLE FIFTEEN

All parts of Article 11 are optional. Complete as desired. Be sure to write your initials for any of these items you desire to apply.

- Field [50] - Type name of Cemetery.
- Field [51] - Type County.
- Field [52] - Type State.

ENDING AND SIGNATURE

- Field [53] - Your name.
- Field [54] - Your name.
- Field [55] - Your name.
- Field [56] - Your name.
- Field [57] - Your name.
- Field [58] - Your name.
- Field [59] - Your name.

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 presence 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 Eleven: This Article is for you to name a personal representative, also called executor or executrix. The person named should be an adult and may be your spouse or relative.

Article Twelve: If not waived, some Courts will require your Personal Representative post a bond, and file an inventory, accounting and/or appraisal. All 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 Thirteen: 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 Fourteen: This article sets forth some legal construction intentions to clarify some of the issues which may arise. It also contains a common disaster clause which provides that if you and your spouse die in a common disaster, your Will is to have precedence. In cases where you and your wife are making Wills, you would only include this paragraph in one Will, or state in both which Will is to control.

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 will 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 where 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.

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.

DISCLAIMER/LICENSE/LIABILITY LIMITATION

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LAST WILL AND TESTAMENT OF

_____ [1]

BE IT KNOWN THIS DAY THAT,

I, _____ [2], of _____ [3] County, South Dakota, 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**

I am married to _____ [4] and have the following children from said marriage:

Name: _____ [5] Date of Birth: _____ [6]
Name: _____ [7] Date of Birth: _____ [8]
Name: _____ [9] Date of Birth: _____ [10]
Name: _____ [11] Date of Birth: _____ [12]

**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 [13]	Address [14] [15] [16]	Relationship [17]
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Property: [18]

Name [19]	Address [20] [21] [22]	Relationship [23]
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Property: [24]

Signed by Testator/Testatrix: _____

Name
[25]

Address
[26]
[27]
[28]

Relationship
[29]

Property: [30]

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, _____ [31], 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.

ARTICLE FIVE All Remaining Property – Residuary Clause

I will, devise, bequeath and give all the rest and remainder 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, to my spouse, _____ [32].

ARTICLE SIX Contingent - All Remaining Property – Residuary Clause

In the event that my spouse shall predecease me, I will, devise, bequeath and give all the rest and remainder 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 (“Residuary Estate”), to my child(ren) _____ [33]. If I have more than one child and any one of my 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.

ARTICLE SEVEN Property To Vest In Trustee for Child Beneficiary

In the event that my spouse predeceases me as provided in Article Six, and any of my children are under the age of _____ [37] years of age, then I direct that my

Signed by Testator/Testatrix: _____

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 on the following terms and conditions:

A.

The Trustee shall hold 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.

B.

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.

C.

As each Beneficiary herein reaches the age of _____[38] 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 _____[39] 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.

D.

In the event of the death of any of the above named Beneficiary prior to the final date of distribution, and said deceased Beneficiary shall leave living issue, the Trustee shall hold only that portion of the Trust property attributable to said deceased Beneficiary beyond the distribution dates as provided in Subparagraph C above, and administer said Trust property for the use and benefit of said living issue. When said youngest living issue reaches the age of _____[40] years, the Trust as to said living issue shall terminate and the Trustee shall distribute all of the remaining Trust property in equal shares to said living issue. In the event of the death of any of the above named Beneficiaries prior to the final date of distribution and said deceased Beneficiaries leave no living issue, then that portion of the Trust property to be distributed to the deceased Beneficiaries as provided for in Subparagraph C above, shall instead be distributed to the surviving Beneficiaries in equal shares.

E.

Personal and real property may be maintained for my Beneficiaries or converted to cash as my Trustee shall determine. I direct that my Trustee administer hereunder any funds coming into the hands of my Beneficiaries pursuant to any life insurance policy insuring my life.

F.

In the event that on the date of my death, my spouse shall have predeceased me and my youngest Beneficiary is over _____[41] years of age, then this Trust shall be inoperative and my entire estate shall be distributed to said Beneficiaries as provided in Article Six.

**ARTICLE EIGHT
Creditors of Beneficiaries**

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 NINE
Appointment of Trustee**

I appoint _____[42], or if the appointee fails to qualify or ceases to act, I appoint _____[43], 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 South Dakota 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.

**ARTICLE TEN
Appointment of Guardian**

In the event that my spouse, _____[44], dies without having made just provision for the care and custody of our children who may be under the age of _____[45] years, or in the event my spouse predeceases me, then on the date of my death, I appoint _____[46], as Guardian of said children.

**ARTICLE ELEVEN
Appointment of Personal Representative, Executor or Executrix**

I hereby appoint _____[47], 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 _____[48] 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 TWELVE
Waiver of Bond, Inventory, Accounting, Reporting and Approval**

Signed by Testator/Testatrix: _____

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 appraisement of my estate.

ARTICLE THIRTEEN
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 South Dakota and to the extent not prohibited by the laws of South Dakota, the following additional powers:

1. To exercise all of the powers, rights and discretions granted by virtue of any "Uniform Trustees' Powers Law," and/or "Probate Code" adopted by the State of South Dakota.

2. To compromise claims and to abandon property which, in my Executor's opinion is of little or no value.

3. To purchase or otherwise acquire and to retain any and all stocks, bonds, notes or other securities, or shares or interests in investment trusts and common trust funds, or in any other property, real, personal or mixed, as my Personal Representative may deem advisable, whether or not such investments or property be of the character permissible by fiduciaries, without being liable to any person for such retention or investment.

4. To settle, adjust, dissolve, windup or continue any partnership or other entity in which I may own a partnership or equity interest at the time of my death, subject, however, to the terms of any partnership or other agreement to which I am a party at the time of my death. I authorize my Personal Representative to continue in any partnership or other entity for such periods and upon such terms as they shall determine. My Personal Representative shall not be disqualified by reason of being a partner, equity owner or title holder in such firm from participating on behalf of my estate in any dealings herein authorized to be carried on between my Personal Representative and the partners or equity owners of any such partnership or other entity.

5. To lease, sale, or offer on a lease purchase, any real or personal property for such time and upon such terms and conditions in such manner as may be deemed advisable, all without court approval.

6. To sell, exchange, assign, transfer and convey any security or property, real or personal, held in my estate, or in any trust, at public or private sale, at such time and price and upon such terms and conditions (including credit) as my Personal Representative may deem advisable and for the best interest of my estate, or any trust. I hereby waive any requirement of issuing summons, giving notice of any hearing, conducting or holding any such hearing, filing bond or other security, or in any way obtaining court authority or approval for any such sale, exchange, assignment, transfer or conveyance of any real or personal property.

7. To pay all necessary expenses of administering the estate and any trust including taxes, trustees' fees, fees for the services of accountants, agents and attorneys, and to reimburse said parties for expenses incurred on behalf of the estate or any trust hereunder.

8. Unless otherwise specifically provided, to make distributions (including the satisfaction of any pecuniary bequest) in cash or in specific property, real or personal, or in an undivided interest therein, or partly in cash and partly in other property, and to do so with or without regard to the income tax basis of specific property allocated to any beneficiary and without making pro rata distributions of specific assets.

9. To determine what is principal and what is income with respect to all receipts and disbursements; to establish and maintain reserves for depreciation, depletion, obsolescence, taxes, insurance premiums, and any other purpose deemed necessary and proper by them and to partite and to distribute property of the estate or trust in kind or in undivided interests, and to determine the value of such property.

10. To participate in any plan of reorganization, consolidation, dissolution, redemption, or similar proceedings involving assets comprising my estate or any trust created hereunder, and to deposit or withdraw securities under any such proceedings.

11. To perform such acts, to participate in such proceedings and to exercise such other rights and privileges in respect to any property, as if she or he were the absolute owner thereof, and in connection therewith to enter into and execute any and all agreements binding my estate and any trust created hereunder.

12. To compromise, settle or adjust any claim or demand by or against my estate, or any trust, to litigate any such claims, including, without limitation, any claims relating to estate or income taxes, or agree to rescind or modify any contract or agreement.

13. To borrow money from such source or sources and upon such terms and conditions as my Personal Representative shall determine, and to give such security therefore as my Personal Representative may determine.

All authorities and powers hereinabove 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 FOURTEEN Construction Intentions

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 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.

5. In the event that my spouse, _____ [49], and I die under circumstances where it is difficult to determine who died first, I direct that I be deemed to have survived her/him and the terms of my Will shall take precedence over any Will or Codicil that he/she may have made, notwithstanding any provisions of the law to the contrary.

**ARTICLE FIFTEEN
Misc. Provisions**

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

(I have placed my initials next to the provisions below that I desire to adopt. Unmarked provisions are not adopted by me and are not a part of this Will)

_____ If any person named herein is indebted to me at the time of my death and such indebtedness be evidenced by a valid Promissory Note payable to me, then such person's portion of my estate shall be diminished by the amount of such debt.

_____ Any and all debts of my estate shall first be paid from my residuary estate. Any debts on any real property left herein shall be assumed by the person to receive such real property and not paid by my Personal Representative.

_____ I desire to be buried in the _____ [50] cemetery in _____ [51] County, _____ [52].

_____ I direct that my remains be cremated and that the ashes be disposed of according to the wishes of my Executor.

I, _____ [53], 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 [54]

The above and foregoing Will of _____[55] (name of testator/testatrix) was declared by _____[56] (name of testator/testatrix) in our view and presence to be his/her Will and was signed and subscribed by the said _____[57] (name of testator/testatrix) in our view and presence and at his/her request and in the view and presence of _____[58] (name of testator/testatrix) and in the view and presence of each other, we, the undersigned, witnessed and attested the due execution of the Will of _____[59] (name of testator/testatrix) on this the ____ day of _____, 20__.

Witness Signature
Print Name: _____
Address: _____

City, State, Zip: _____
Phone: _____

Witness Signature
Print Name: _____
Address: _____

City, State, Zip: _____
Phone: _____

South Dakota 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 eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

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 [his] [her] will and that [he] [she] signs it willingly, that [he] [she] executes it as [his] [her] free and voluntary act for the purposes therein expressed, and that each of us, in the presence and hearing of the testator/testatrix, hereby signs this will as witness to the testator's/testatrix signing, and that to the best of our knowledge the testator/testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

The State of South Dakota
County of _____

Subscribed, sworn to and acknowledged before me by _____, the testator/testatrix, and subscribed and sworn to before me by _____, and _____, witnesses, this ____ day of _____, 20____.

(Seal)

(Signed) _____

(Official capacity of officer)