

WILLS

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I. FOREWORD

§1.1 Nearly all lawyers will be called on to write many wills. A will can be the most simple or complicated of legal instruments. It is definitely the most often litigated. If carefully drawn, it can lead to an orderly and productive management of an estate. If not carefully thought through, it can lead to totally unexpected consequences. The following step-by-step guide for preparing a will may assist in preparing a suitable and workable will for any size estate.

§1.2 This chapter does not contain comprehensive materials on tax considerations, as taxation is a refined specialty. Federal Estate Tax and, on an incidental basis, West Virginia Estate Tax must be carefully considered in connection with each will drawn. If the estate is large, an attorney who concentrates his practice in the Federal Estate Tax area should be consulted.

§1.3 Estate planning involves counseling as to the most desirable overall program for distributing the estate to the objects of the testator's bounty, taking into consideration tax savings, equitable treatment of beneficiaries, liquidity, insurance, various forms of retirement and pension plans and many other aspects. It is an extensive and complicated field but must be considered before writing any will. The checklists herein will help in this. If the estate is large and complex, you should consult a specialist in the estate planning field. This chapter will also touch on the problems presented by the prevalent West Virginia practice of owning property as joint tenants with right of survivorship.

§1.4 Probate and administration of estates are not dealt with in this chapter, nor are testamentary trusts or multiple trust wills discussed in any detail.

§1.5 To summarize, this chapter deals with simple wills and a few basic forms. There is space for no more.

§1.6 In the interest of simplicity, this chapter is presented using the masculine gender, rather than alternatives such as executor/executrix and administrator/administratrix.

II. THE PERTINENT WEST VIRGINIA CODE PROVISIONS

§2.1 Testamentary Capacity. W. Va. Code §§ 44-1-1 and 41-1-2 provide that anyone other than persons of unsound mind or under the age of 18 may make a will. To avoid the complexities of a subsequent will contest, the testator should understand the nature of the act of making a will, know the natural objects of his bounty, know the nature and approximate value of the property and understand the disposition being made.

§2.2 Requirements as to Form. W. Va. Code § 41-1-3 requires the following for the execution of a valid will: It must be in writing and either holographic or signed by or for the testator at his direction, in the presence of two competent witnesses who must witness and subscribe the same in the presence of the testator and of each other, all present at the time. No

form of attestation is prescribed; however, an attestation clause should always be used because it serves as prima facie evidence of the facts recited therein.

§2.3 Proof of Will while Testator is Living. W. Va. Code § 41-5-15 provides a method whereby the attesting witnesses may prove the execution and attestation of the will by affidavit while testator is still living (thus eliminating the necessity for producing the witnesses at testator's death, when they may be dead or missing). This affidavit should always be used. A form is provided with the will forms.

§2.4 Appointment of Guardian. W. Va. Code § 44-10-1 provides that a father or mother may, by will, appoint a guardian for his or her child, born or unborn.

§2.5 Making Testamentary Trustee Beneficiary of Life Insurance. W. Va. Code § 44-5-11 authorizes the designation of a testamentary trustee as beneficiary of a life insurance policy, without the trust becoming liable for debts of the insured to any greater extent than if payable to a named beneficiary.

§2.6 Revocation by Marriage, Annulment or Divorce. W. Va. Code § 41-1-6 provides that the effect of divorce or annulment on a will with respect to the former spouse is to revoke the disposition to the former spouse and treat the former spouse as having predeceased the decedent. Thus, the estate is distributed and fiduciaries are named as though the former spouse predeceased the testator.

§2.7 General Revocation. W. Va. Code § 41-1-7 provides that revocation may be done (1) by a subsequent will or codicil executed with the same formalities received for a will, as discussed above, (2) by some properly executed writing declaring an intention to revoke a prior will, or (3) by the physical destruction of the will with intent to revoke by or at the instruction of the testator. Burning, tearing, canceling, obliterating, or other acts of destruction constitute a valid revocation by physical act.

§2.8 Revival after Revocation. W. Va. Code § 41-1-8 provides that in order to be revived, a will must be re-executed or it must be revived by a reference thereto in a properly executed codicil.

§2.9 Witnesses. W. Va. Code §§ 41-2-1, 41-2-2 and 41-2-3 allow creditors and executors to act as witnesses, but provide limitations on the competency of beneficiaries as witnesses. Interested witness situations do not affect the validity of the will, but the beneficiary serving as a witness will often lose his or her legacy.

§2.10 Advancements after the Will. W. Va. Code § 41-3-2 applies the doctrine of advancements to wills. In the absence of an offsetting provision in the will, if the testator stands in loco parentis to the donee, an inter vivos gift made after the execution of the will is presumed to be in satisfaction of a general or residuary legacy or bequest. However, an offsetting provision may be placed in the will to negate the operation of this section.

§2.11 Death of Legatee or Devisee before Testator. W. Va. Code § 41-3-3 provides that if a devisee or legatee dies before testator, leaving issue who survive the testator, the issue takes; and if the devise or bequest is to two or more in equal shares, and one or more die without issue, his share shall not go to the surviving devisees or legatees but shall pass by intestacy. Thus, a gift in a will to a beneficiary who predeceases the testator may be saved by operation of the anti-lapse statute.

§2.12 Exercise of Power of Appointment. W. Va. Code § 41-3-6 provides that a devise or bequest shall operate as an exercise of a power of appointment, unless a contrary intention appears or the instrument creating the power requires such power to be specifically referred to and disposes of the gift upon failure to exercise the power.

§2.13 Pretermitted Children. W. Va. Code § 41-4-1 provides that where no child is living when the will is made, and a child is subsequently born, that child is treated as though the parents had died intestate. Likewise, when the testator has children but another child, or children, are subsequently born, W. Va. Code § 41-4-2 provides that the afterborn child, or children, shall take and share as they would have if the parent had died intestate. The share in each instance is provided by contributions from the devisees and legatees. Each section contains certain exemptions in the event the pretermitted children die before reaching age 18, unmarried and without issue. If the child was alive when the will was executed, these sections do not apply, and the child may be cut out of the will.

§2.14 Life Estate with Power of Disposal. W. Va. Code § 36-1-16 provides that when a life estate is created, with the absolute power of disposal given to the first taker in his lifetime, the interests of remaindermen will only be defeated to the extent the power of disposal is lawfully exercised.

§2.15 Construction. W. Va. Code §§ 41-3-1 through 41-3-11 set forth the applicable rules of construction. The will is to be looked upon as having been written immediately prior to the testator's death. The intention of the testator is the cardinal rule for will construction.

§2.16 Uniform Simultaneous Death Act. W. Va. Code §§ 42-5-1 to 42-5-10 provide that, where the title to property or its devolution depends upon the priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each is to be disposed of as if he or she had survived. Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property will be distributed half as if one had survived and half as if the other had survived. However, the presumption of simultaneous death can be overcome by a specific provision in the will.

III. TESTATOR INFORMATION CHECKLIST

§3.4 Assets.

A. In testator's name alone

1. Real estate (indicate location, approximate value, and whether one or more tracts)
 - a. Residence
 - b. Income property
 - c. Business property
 - d. Cemetery lot
 - e. Life estates (Cash)
 - f. Currency (location)
 - g. Checking accounts
 - h. Savings accounts (banks and savings and loan associations)
2. Corporate stocks (list shares in each company, current market value and cost)
3. Bonds (list company, amount, market value and cost)
4. Brokerage Accounts (list assets held in account)
5. DRIPS (list stocks held in Dividend Reinvestment Plans)
6. Insurance (details below)
7. Tangible personalty (indicate any items to be singled out for special treatment, e.g., car, boat, stamp collection, etc.)
8. Business interests (indicate proprietorship, partnership, corporation, buy-sell agreements)
9. Pledged property
10. Beneficiary of trusts
11. Pension or profit-sharing plan benefits (examine documents, especially for death benefits)
12. Revocable and irrevocable trusts with testator as donor
13. IRA's, 401(k) plans and IRA rollovers
14. Source of income (this may reveal assets inadvertently omitted and extent of contributions to jointly owned properties)
15. Source of income (this may reveal assets inadvertently omitted and extent of contributions to jointly owned properties)
 - a. Salaries
 - b. Rents
 - c. Dividends
 - d. Annuities
 - e. Interest
 - f. Social Security, pensions, retirement pay, etc.
 - g. Other

§3.5 Property Owned with Others

- A. Name of co-owner and all pertinent personal data as indicated in §3.2 above
- B. Whether owned as joint tenants with right of survivorship or tenants in common
- C. All property data as indicated in §3.4 above
- D. Extent of interest of each co-owner
- E. Source of funds used to purchase same, in case of joint owner with survivorship
- F. Date and facts of acquisition

§3.6 Insurance

- A. Life (company, group, beneficiaries, settlement option, face amount)
- B. Term
- C. Accidental death (company, beneficiaries, settlement option, face amount)
- D. Social Security, pensions, or profit-sharing plan benefits (examine documents, especially for death benefits)
- E. Retirement or death benefits from employer

§3.7 Interests in Estates

- A. Name of Estate
- B. Fiduciary
- C. Interest
- D. Value

§3.8 Expectancies and Powers of Appointment

§3.9 Liabilities Which May Affect Estate

- A. Mortgages (realty and personalty, indicate premises covered)
- B. Notes, loans and judgments (indicate collateral)
- C. Agreements
- D. Support orders and separation agreements
- E. Contingent liabilities:
 - 1. An endorser or surety on notes and loans
 - 2. Lawsuits pending
 - 3. Indemnity agreements and miscellaneous

§3.10 Spouse's Assets and Liabilities - List with same detail as above

§3.11 Location of Assets

- A. Safe deposit box (indicate location, nature of lease, and property contained in box)
- B. Stockbroker
- C. Recording jurisdiction of real estate
- D. Pledge custodians

§3.12 Where Will is to be Kept

§3.13 Guardian for Infant Children, If Any

§3.14 Custodian for Assets of Infant Children, If Any

IV. DISPOSITIVE OBJECTIVES CHECKLIST

§4.1 Non-Trust List

- A. Source from which funeral expenses, debts, and death taxes are to be paid and whether specific or other beneficiaries are to be charged with his or her share thereof
- B. Specific bequests of personalty
- C. Demonstrative bequests of money payable from a certain fund or of certain property
- D. Charitable bequests
- E. General bequests
- F. Specific devises of real estate
- G. Is devise subject to mortgage or is debt to be paid from residuary estate
- H. Provision in event of lapse, gift-over, etc.
- I. Residuary beneficiaries
- J. Final disposition in event all named individual beneficiaries (including issue where pertinent) should die prior to final vesting

§4.2 Gifts in Trust

- A. Property
- B. Beneficiaries
- C. Income disposition or accumulation
- D. Principal disposition; invasion power
- E. Spendthrift clause
- F. Control by beneficiary
- G. Protection of purchasers
- H. Trustee designation, successor Trustee
- I. Trustee's powers

V. ADMINISTRATIVE MATTERS CHECKLIST

§5.1 Executor and Powers. Successors to named executors

§5.2 Death Taxes. This has been mentioned under §1.2 above. It is again mentioned here to suggest inquiry as to insurance, how payable, whether available for death taxes and debts, and the following details:

- I. Apportionment of taxes
- II. Exoneration from taxes
- III. Payment from residue

VI. PROBLEMS OF JOINT OWNERSHIP

§6.1 As Part of the Estate. In planning the will, remember that it does not operate on property held by testator and another (usually his wife) as joint tenants with right of survivorship. Such property will not be available to the executor as an asset of the estate, but is subject to Federal Estate Tax and West Virginia Estate Tax. It must be considered in arriving at the marital deduction.

§6.2 Taxation of Survivorship Property. The Internal Revenue Service will assume that it was paid for, in full, by the first joint tenant to die, and, unless the executor can prove otherwise by competent evidence, it will be taxed in full as an asset of that estate. If retained by the survivor, it will be taxed again in the survivor's estate (subject to any credits). Special provisions are applicable to husband and wife survivorship property.

§6.3 Corrective Action. It may be desirable to arrange to terminate joint tenancies and create absolute ownerships. This requires great care, both as to method and to avoid undesirable tax consequences.

VII. OUTLINE OF A WILL

§7.1 Components. The desirable components of a will, in the order in which they may be conveniently placed therein, are as follows:

- I. Name and identification of testator and declaration that the instrument is his will.
- II. Although a testator may suggest placing burial plans in his will, it is of doubtful value to place special instructions as to burial in the will. It is rarely read until after the funeral. A letter to testator's spouse, trustee, child or a friend is much better, unless a copy of the will is carefully explained to probable survivors.
- III. Instruments for payment of funeral expenses, debts and transfer taxes. the source of funds for the same, and to whom they should be charged.

- IV. Dispositive provisions including trusts, if any.
- V. Appointment of executors and provisions as to their bond, powers, and powers of surviving or successor personal representatives.
- VI. Testimonium clause and signature. This should contain a recital that the will is written without interlineations on _____ (the correct number) sheets of letter size (or legal length, or the inch size) paper, with the testator's signature on each sheet.
- VII. Signatures of witnesses.

§7.2 Affidavit of Attesting Witnesses. Under W. Va. Code § 41-5-15, an affidavit of attesting witnesses should be used for proof of the will. If the affidavit form of attestation is not used, an attestation clause signed by the witnesses reciting the same information should be used with the will forms provided.

VIII. MECHANICAL FEATURES IN THE PREPARATION OF THE WILL

§8.1 Practical Suggestions. The following are suggestions only, but may be found useful in the actual preparation of the instrument:

- A. Be prompt. Sudden death after receiving testator's instructions, but before the will is signed, occurs more frequently than is generally realized, with sometimes very serious miscarriages of testamentary intent.
- B. Use plain, good quality bond paper, either 8 1/2 x 11 or 8 1/2 x 13 at testator's or attorney's choice.
- C. Double space.
- D. Number each page and place a line for testator's signature at the bottom right side of each page so that all chance of substitution of pages is eliminated.
- E. With the common use of word processors today, no interlineations or inserts are acceptable.
- F. Inform your client as soon as the will is ready and quietly, but firmly, urge prompt execution.
- G. Make a back and a will envelope for the original. Ordinarily, neither a back nor an envelope is provided for the client's extra copy.

§8.2 Use of Word Processors. Most lawyers have their will formats set up on word processors with appropriate codes designating points at which variable data must be inserted. Use of such formats does not preclude the necessity of a careful proofing of the will in final form.

IX. EXECUTION, ATTESTATION AND PROOF - CHECKLIST AND SUGGESTIONS

§9.1 Have testator read the original of the entire will, even though it is lengthy, and explain its important features to him.

§9.2 When the will is completely read, and the witnesses and notary public are all present, ask testator to declare that the instrument is his will and to request the witnesses to witness and attest his signature thereto. Then, have him date and sign the will on each page, and in the spaces provided in and following the testimonium clause in the presence of all witnesses and the notary public.

§9.3 Have all witnesses sign both the will and the affidavit in the presence of the testator, all other witnesses and a notary public, all present at the same time. Do not use creditors, beneficiaries of the will or executors as witnesses.

§9.4 All of the states in the United States require two witnesses, exception Connecticut, Maine, Massachusetts, New Hampshire, Vermont, Georgia and South Carolina. However, Pennsylvania has some highly technical laws of its own, which we need not consider here. If by any chance testator has or may probably have property in any of these states, or if any possible question on the subject exists, use three witnesses.

§9.5 Have the notary public take the oath of all witnesses and fill out, sign and seal the affidavit. An affidavit form is attached to the sample wills appended hereto.

§9.6 Prepare enough duplicate copies of the will so there may be one for each testator, your file, and the executor if testator so wishes.

§9.7 Ask testator where the original will is to be kept and note same on your file copy, initialing your note.

§9.8 Deliver original, fully executed and proven will to testator, unless he insists you keep it for him. Discourage this practice, as you may predecease testator and your files may be scattered. Should he insist, note on his duplicate copy that the original was on that date placed in our file in testator's name, preferably giving the file number.

X. CUSTODY OF WILL

§10.1 Paragraphs 7 and 8 of the preceding section fairly well cover this point. The attorney should not be hesitant about advising his client as to the best place to keep a will. The best place is testator's safe deposit box. Following death, bank officials will cooperate with any qualified person to examine such a box to determine whether a will is contained therein and permit it to be withdrawn for probate. The next best place is his file in your office. The least desirable is testator's home, where it is most subject to loss, fire, theft or accidental or purposeful destruction.

§10.2 If a bank is named executor or trustee, the original may well be deposited with it.

XI. REVIEW OF WILLS

§11.1 Periodic review. Your client should be advised of the need for periodic review of his will. He should be informed of the effect upon his will of a birth, marriage, divorce, death of a spouse, a change in his financial condition or other pertinent facts. In particular, the testator should be advised to consult his attorney as to the need for a new will whenever anyone named in the will dies or when the testator marries, has a new child, is divorced, or changes his legal residence to another state.

§11.2 Changes in tax laws. Over the past years, there have been numerous changes made in federal and state tax laws applicable to decedents' estates. Clients should also be advised that their wills should be reviewed following significant changes in the tax laws.

XII. CODICILS

§12.1 Discourage use of codicils. Use codicils sparingly. In most cases, it is preferable to draft a new will. For example, do not use a codicil to eliminate a legatee or reduce or revoke a bequest or devise. A carelessly drafted codicil reducing a bequest could result in a double gift. A new will eliminates this problem. If you do draft a codicil, you should never do so without the will before you. Above all, be sure to review the entire will to avoid any conflict with the provisions of the will remaining in effect when drafting a codicil.

§12.2 Uses of a codicil.

A. If you desire to make only a simple change, such as the naming of a new executor or trustee, there may be no necessity for a new will and a codicil can be used. Codicils can also be used to correct mistakes in the wording of a will.

B. A codicil may be advisable where testator's competency is failing due to age or ill health, and it is desired that the old will not be revoked. Similar considerations apply to cases where testator is seriously ill and may not be physically capable of reading a lengthy will, but may be able to read a brief codicil.

C. A codicil can be used for small, specific bequests of tangible personalty, e.g., "I give and bequeath my living room rug to X, if he survives me."

§12.3 A codicil must be executed with the same formality as a will described in Part IX above.

XIII. TAXES

§13.1 Foreword. Federal Estate Taxes and West Virginia Estate Taxes apply to estates whether or not there is a will, and there will be no full discussion of them here. We simply point out that both exist, both should be understood in their broad application and general effect before any will is drafted, and their effect on the specific estate should be explained to the testator so that

unnecessary taxes may be avoided. The most recent rates and exemptions should be checked and their probable impact on the estate explained to the testator.

§13.2 The West Virginia Estate Tax. West Virginia Code Chapter 11, Article 11, contains the provisions of this tax which is basically equal to the state death tax credit allowed on the Federal Estate Tax Return.

§13.3 The Federal Estate Tax. In estates of substantive size, the Federal Estate Tax is usually the largest item required to be paid from the estate. In an estate having assets of over \$1,000,000.00 (the applicable credit amount for 2003), taxes must be considered with care in planning the type of will to recommend to your client.

Federal Estate Tax may sometimes be greatly reduced or eliminated by the use of the marital deduction. This, in essence, excludes property passing to a surviving spouse from estate taxation. There are limitations on what property can qualify for this deduction, an explanation of which is beyond the scope of this chapter. The principal limitation is that to qualify for the marital deduction, the property must be includable in the surviving spouse's estate. Present Federal Estate Tax law permits an unlimited marital deduction which can include qualified terminable interest property ("QTIP") permitting a testator to direct the ultimate disposition of QTIP following the death of the surviving spouse.

Tax questions require serious study which must be made if the estate is of sufficient size to incur Federal Estate Tax and West Virginia Estate Tax. The testator should have this fact, together with the fact that more legal expense is involved in making the study, explained to him in some detail before the will is written.

XIV. INTESTATE SUCCESSION

§14.1 W.Va. Code §§ 42-1-1 to 42-1-10 provide the statutory framework for intestate succession in West Virginia. This article of the West Virginia Code was rewritten in 1992 and has substantially impacted the law of intestate succession in West Virginia.

§14.2 The law of intestate succession applies when a property owner dies without a will, leaves a will which is denied probate, leaves a will which does not make a complete disposition of the estate, or directs that the property be distributed according to the intestate laws. In addition, the law of intestate succession may be invoked in a question involving a pretermitted child

§14.3 Persons who take by intestate succession are referred to as heirs. Persons who take under a will are beneficiaries, legatees or devisees.

§14.4 In West Virginia, the surviving spouse's intestate share is governed by W.Va. Code § 42-1-3 (1993). The intestate share of heirs other than the surviving spouse is governed by W. Va. Code § 42-1-3a (1992).

§14.5 The distribution rule in West Virginia is *per stirpes*, meaning one share for each family line. The descendants of deceased offspring of the decedent take by representation the share their parent would have taken had that parent survived to be an heir.

§14.6 Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

§14.7 Under intestacy, a lifetime gift to an heir is not an advancement, and is not adeemed, unless it is declared as such in a contemporaneous writing by the donor, or is acknowledged as such in writing by the donee.

XV. DISCLAIMER BY BENEFICIARY OR HEIR

§15.1 W.Va. Code § 42-6-1 et. seq. provides the statutory framework for disclaiming a property interest in a decedent's estate.

§15.2 No one can be compelled to be a beneficiary or heir.

§15.3 To be valid, a disclaimer must:

- a. describe the property or interest disclaimed
- b. declare the disclaimer and extent thereof
(Note: the disclaimer may be a partial disclaimer)
- c. be signed by the disclaimant
- d. be notarized
- e. be filed within nine (9) months of death or receipt of notice of devise or bequest by disclaimant

§15.5 Disclaimed property passes as if the disclaimant had immediately predeceased the testator.

XVI. ELECTIVE SHARE STATUTE

§16.1 W.Va. Code § 42-3-1 et. seq. provides the statutory framework for protecting the rights of a husband or wife upon the death of a spouse. This article of the West Virginia Code was rewritten in 1992 and abolishes the common law concept of dower.

§16.2 The elective share statute is designed to protect surviving spouse against disinheritance by a deceased spouse.

§16.3 West Virginia takes an accrual approach to elective shares under which the amount of the elective share available to a spouse is tied to the length of the marriage.

§16.4 The right to an elective share is not automatic. The spouse must file a notice of election within nine months of the decedent's death or within six months after the probate of the

decedent's will, whichever limitation later expires.

§16.5 The elective share applies to the augmented estate of the decedent which is comprised of the net probate estate, the value of the decedent's reclaimable estate as defined by W.Va. Code § 42-3-2 (1993), and the spouse's estate as defined in W. Va. Code § 42-3-6.

XVII. SOME SAMPLE WILLS

§17.1 Explanation. As a practical guide for young lawyers to illustrate some of the points made in the preceding remarks and to show examples of the way in which certain special circumstances have been handled, full copies of certain types of wills are included.

§17.2 Form One: Simple Will, All to Wife. This is a will suitable for a common situation, that of a married couple with no children or grown children.

LAST WILL AND TESTAMENT OF

(1)

I, (1), a resident of and domiciled in _____, _____ County, West Virginia, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all previous wills and testamentary dispositions made by me.

Article I. I direct that all my just debts and funeral expenses be paid or provided for as soon as practicable after my death.

Article II. All estate and inheritance taxes or transfer or death taxes which may be assessed or imposed with respect to my estate or any part thereof, wheresoever situated, whether or not passing under this will, including the taxable value of all policies of insurance on my life and all transfers, powers, rights or interests includable in my estate for the purpose of such taxes, shall be paid out of my residuary estate as an expense of administration and without apportionment and shall not be prorated or charged against any of the other gifts in this Will or against property not passing under this Will.

Article III. I direct that any gift or transfer which I have made or may hereafter make during my lifetime to any beneficiary under this Will shall not be treated as an advancement or be brought into hotchpot.

Article IV. All of the rest, residue and remainder of my estate, of whatever kind and character and wheresoever situate, I give, devise and bequeath to my wife, (4), if she survives me.

Article V. If my said wife, (4), should not survive me, then I give, devise and bequeath all of the rest, residue and remainder my estate, of whatever kind and character and wheresoever situate, to my (5), (6), share and share alike, but if any of said beneficiaries should not survive me, then the share that would have gone to such beneficiary in such rest, residue and remainder shall go to his or her issue, per stirpes, but if there be no such issue, then the share of such beneficiary predeceasing me shall go to increase the shares of the other beneficiaries or their issue living at such time, per stirpes. If my beneficiaries are unable to agree on a division of my assets, then my Executrix, in her discretion, shall make a division of the assets or sell the same and divide the proceeds of sale as to her may seem best and her discretion shall be final and binding on such beneficiaries and their issue.

Article VI. Although my spouse and I may have executed wills with similar or reciprocal provisions at or near the same time, it is expressly provided that the two wills shall not be considered together as mutual wills executed pursuant to a contractual arrangement.

Article VII. I appoint my wife, (4), as Executrix of this my Last Will and Testament. In the event my said wife should not survive me or should fail or refuse to qualify as Executrix hereunder, or, having qualified as Executrix hereunder, should thereafter die, resign or become incompetent, then I appoint my (7), (8), as Executor of this my Last Will and Testament. I direct

that no bond shall be required of any person named herein for serving as my personal representative. Any personal representative appointed to administer my estate is hereby expressly authorized and empowered to sell any real estate owned by me at my death and execute a deed conveying the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this my Last Will and Testament, which is written without any interlineations on three (3) sheets of paper, to each of which I have subscribed my name. All done at _____, _____ County, West Virginia, on this _____ day of _____, 20__.

(1)

Witnesses:

STATE OF WEST VIRGINIA,

COUNTY OF _____:

This day personally appeared before me, the undersigned authority, the three witnesses whose names are signed below, who, after being by me first duly sworn, did say that the foregoing instrument contained on three (3) sheets of paper was on the _____ day of _____, 20__, signed and sealed by (1), the testator therein named, and duly published and declared by him to be his Last Will and Testament and his free act and deed in the presence of them, who at his request and in his presence and in the presence of each other did subscribe their names as witnesses, and they and each of them also did certify and state that the signature of said testator was duly made and appeared to them on the Will before they signed as witnesses as aforesaid, and that they and each of them do believe said testator would be at this time of sound mind and memory.

Subscribed and sworn to before me, a Notary Public in and for the County and State aforesaid, this _____ day of _____, 20__.

My commission expires _____

Notary Public

[Notarial Seal]

§17.3 Form Two: All to Children if Wife does not Survive, and Provisions for Guardian.

LAST WILL AND TESTAMENT OF

(1)

I, (1), a resident of and domiciled in _____, _____ County, West Virginia, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all previous wills and testamentary dispositions made by me.

Article I. I direct that all my just debts and funeral expenses be paid or provided for as soon as practicable after my death.

Article II. All estate and inheritance taxes or transfer or death taxes which may be assessed or imposed with respect to my estate or any part thereof, wheresoever situated, whether or not passing under this will, including the taxable value of all policies of insurance on my life and all transfers, powers, rights or interests includable in my estate for the purpose of such taxes, shall be paid out of my residuary estate as an expense of administration and without apportionment and shall not be prorated or charged against any of the other gifts in this Will or against property not passing under this Will.

Article III. I direct that any gift or transfer which I have made or may hereafter make during my lifetime to any beneficiary under this Will shall not be treated as an advancement or be brought into hotchpot.

Article IV. If my said wife predeceases me, I appoint my (5), (6), as guardian of the person and property of any of my children who may be minors at the time of my death. If my said (5), (6), should fail for any reason to qualify as guardian, or, having qualified, should cease for any reason to act, the I appoint (7), (8), as successor guardian hereunder.

Article V. All of the rest, residue and remainder of my estate, of whatever kind and character and wheresoever situate, I give, devise, and bequeath to my wife, (4), if she survives me. If my said wife, (4), should not survive me, then I give, devise and bequeath all of the rest, residue and remainder of my estate, of whatever kind and character and wheresoever situate, to my issue, per stirpes.

Article VI. Although my spouse and I may have executed wills with similar or reciprocal provisions at or near the same time, it is expressly provided that the two wills shall not be considered together as mutual wills executed pursuant to a contractual arrangement.

Article VII. I appoint my wife, (4), as Executrix of this my Last Will and Testament. In the event my said wife should not survive me or should fail or refuse to qualify as Executrix hereunder, or, having qualified as Executrix hereunder, should thereafter die, resign or become incompetent, then I appoint my (5), (6), as Executor of this my Last Will and Testament. I direct that no bond shall be required of any person named herein for serving as my personal representative. Any personal representative appointed to administer my estate is hereby expressly

authorized and empowered to sell any real estate owned by me at my death and to execute a deed conveying the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this my Last Will and Testament, which is written without any interlineations on three (3) sheets of paper, to each of which I have subscribed my name: All done at _____, _____ County, West Virginia, this _____ day of _____, 20__.

(1)

Witnesses:

STATE OF WEST VIRGINIA,

COUNTY OF _____:

This day personally appeared before me, the undersigned authority, the three witnesses whose names are signed below, who, after being by me first duly sworn, did say that the foregoing instrument contained on three (3) sheets of paper was on the _____ day of _____, 20____, signed and sealed by (1), the testator therein named, and duly published and declared by him to be his Last Will and Testament and his free act and deed in the presence of them, who at his request and in his presence and in the presence of each other did subscribe their names as witnesses, and they and each of them also did certify and state that the signature of said testator was duly made and appeared to them on the Will before they signed as witnesses as aforesaid, and that they and each of them do believe said testator would be at this time of sound mind and memory.

Subscribed and sworn to before me, a Notary Public in and for the County and State aforesaid, this _____ day of _____, 20____.

My commission expires _____.

Notary Public

[Notarial Seal]

§17.4 Form Three: Will with Simple Trust for Children. There is a very simple trust. If substantial assets are involved, more comprehensive trust provisions should be used.

LAST WILL AND TESTAMENT OF

(1)

I, (1), a resident of and domiciled in _____, _____ County, West Virginia, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all previous wills and testamentary dispositions made by me.

Article I. I direct that all my just debts and funeral expenses be paid or provided for as soon as practicable after my death.

Article II. All estate and inheritance taxes or transfer or death taxes which may be assessed or imposed with respect to my estate or any part thereof, wheresoever situated, whether or not passing under this will, including the taxable value of all policies of insurance on my life and all transfers, powers, rights or interests includable in my estate for the purpose of such taxes, shall be paid out of my residuary estate as an expense of administration and without apportionment and shall not be prorated or charged against any of the other gifts in this Will or against property not passing under this Will.

Article III. I direct that any gift or transfer which I have made or may hereafter make during my lifetime to any beneficiary under this Will shall not be treated as an advancement or be brought into hotchpot.

(1)

Article IV. If my said wife predeceases me, I appoint my (5), (6), as guardian of the person and property of any of my children who may be minors at the time of my death. If my said (5), (6). should fail for any reason to qualify as guardian, or, having qualified, should cease for any reason to act, then I appoint (7), (8), as successor guardian hereunder.

Article V. All of the rest, residue and remainder of my estate, of whatever kind and character and wheresoever situate, I give, devise and bequeath to my wife, (4), if she survives me. If my said wife, (4), should not survive me, all of the rest, residue and remainder of my estate, of whatever kind and character and wheresoever situate, I give, devise and bequeath to my (9), (10), in trust, for the following uses and purposes:

(a) To hold, manage and invest the same and from time to time reinvest the same, in such manner as my Trustee shall, in his/her discretion, consider in the best interests of my trust estate.

(b) My Trustee shall pay and distribute to my children, or apply for their benefit, so much of the net income of the trust estate as in the sole and uncontrolled discretion of my Trustee may be necessary or advisable for the support, health, hospitalization, education and maintenance of my children. All of the remainder of the net income shall be paid to my children, per stirpes. Such payment shall be made at least as frequently as quarter-annually.

(c) My Trustee shall pay and distribute to any beneficiary, or apply for the benefit of any beneficiary then entitled to receive income from the trust estate, such amount from the principal of the trust estate as my Trustee may, in his/her sole and uncontrolled discretion, deem necessary or advisable for the support, health, hospitalization, education and maintenance of such beneficiary.

(d) This trust shall terminate when my youngest living child reaches twenty-one (21) years of age or dies prior to attaining such age when none of the other children are under twenty-one (21) years of age, at which time all of the principal and accrued and undistributed income of the trust shall be paid and distributed absolutely to my children, per stirpes.

(e) My Trustee shall render annual accountings showing receipts and disbursements and property on hand, and copies thereof shall be furnished to each beneficiary then entitled to receive income from the trust. However, my Trustee shall not be required to, and is hereby expressly excused from, filing any accounts with or making any settlement before any court, fiduciary commissioner, or other official, or procuring the approval of any act or non-action as Trustee.

(f) Without limitation of the powers conferred by statute or general rules of law, my Executrix and my Trustee are hereby authorized and empowered:

(1) To invest any funds of my estate and trust in any corporate shares, bonds, notes or other securities or property, real or personal, including any common or commingled fund, and notwithstanding that such investments may not be of the character allowed to my Executrix or Trustee by statute or general rules of law, it being my intention to grant to my fiduciaries broad investment powers and discretion;

(2) To sell or otherwise dispose of any property, real or personal, at any time forming a part of my estate or trust for cash or upon credit, in such manner and on such terms and conditions as my Executrix or Trustee may deem best, and no person dealing with either of them shall be bound to see to the application of any moneys paid;

(3) To manage, operate, repair, improve, mortgage and lease for any term any real estate at any time held in my estate or trust;

(4) To make distribution in cash or in kind upon any division of my estate or trust;
and

(5) In general, to exercise all powers in the management of my estate which any individual could exercise in the management of similar property owned in his own right, upon such terms and conditions as may seem best to my Executrix or Trustee, and to execute and deliver any and all instruments and to do all acts which may be deemed proper to carry out the purposes of this will and trust.

Article VI. Although my spouse and I have executed wills with similar or reciprocal provisions at or near the same time, it is expressly provided that the two wills shall not be considered together as mutual wills executed pursuant to a contractual arrangement.

(1)

Article IX. I appoint my wife, (1), as Executrix of this my Last Will and Testament.

In the event my said wife should not survive me or should fail or refuse to qualify as Executrix hereunder, or, having qualified as Executrix hereunder, should thereafter die, resign or become incompetent, then I appoint my (5), (6), as Executor of this my Last Will and Testament. I direct that no bond shall be required of any person named herein for serving as my personal representative. Any personal representative appointed to administer my estate is hereby expressly authorized and empowered to sell any real estate owned by me at my death and to execute a deed conveying the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this my Last Will and Testament, which is written without any interlineations on four (4) sheets of paper, to each of which I have subscribed my name. All done at _____, in _____ County, West Virginia, this ____ day of _____, 20__.

(1)

Witnesses:

STATE OF WEST VIRGINIA,

COUNTY OF _____:

This day personally appeared before me, the undersigned authority, the three witnesses whose names are signed below, who, after being by me first duly sworn, did say that the foregoing instrument contained on four (4) sheets of paper was on the _____ day of _____, 20____, signed and sealed by (1), the testator therein named, and duly published and declared by him to be his Last Will and Testament and his free act and deed in the presence of them, who at his request and in his presence and in the presence of each other did subscribe their names as witnesses, and they and each of them also did certify and state that the signature of said testator was duly made and appeared to them on the Will before they signed as witnesses as aforesaid, and that they and each of them do believe said testator to be at this time of sound mind and memory.

Subscribed and sworn to before me, a Notary Public in and for the County and State aforesaid, this _____ day of _____, 20____.

My commission expires _____.

Notary Public

[Notarial Seal]

§17.5 Codicils. There is no prescribed statutory form for a codicil; however, the codicil must be executed in accordance with the provisions for executing a will set forth in W.Va. Code § 41-1-3 (1997).

CODICIL NO. 1

to the

LAST WILL AND TESTAMENT OF

(1)

I, (1), a resident of and domiciled in _____ County, West Virginia, do hereby make, publish and declare this to be Codicil No. 1 to my Last Will and Testament executed by me on the ____ day of _____, 20____.

I. I hereby amend Article VII of my said Will by deleting it in their entirety subparagraphs (b) and (d) and substituting therefor the following subparagraphs (b) and (d) respectively as if the same had been originally incorporated in said Will.

(b) All of the net income of this trust shall be paid and distributed quarterly or, in the discretion of my Trustees, at more frequent intervals to my said wife, (3), as long as she shall live. At the death of my said wife, all accrued and undistributed income shall be paid to my said wife's estate.

(d) This trust shall terminate upon the death of my wife, (3), at which time all of the principal of the trust shall be paid and distributed absolutely to the Trustees of the Non-Marital Trust established in Article VIII of this Will.

II. As amended by this Codicil, I hereby ratify, confirm and republish my said Last Will and Testament executed by me on the ____ day of _____, 20____, and I declare that said Last Will and Testament and this Codicil No. 1 thereto constitute my Last Will and Testament.

(1)

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this Codicil No. 1
to my Last Will and Testament, executed by me on the ____ day of _____, 20____,
being written on two (2) sheets of paper to each of which I have subscribed my name, all done
at _____, _____ County, West Virginia, this ____ day of
_____, 20____.

(1)

Witnesses:

STATE OF WEST VIRGINIA,

COUNTY OF _____:

This day personally appeared before me, the undersigned authority, the three witnesses _____, _____, and _____, whose names are signed below, who, after being by me first duly sworn, did say that the foregoing instrument contained on two (2) sheets of paper was on the _____ day of _____, 20____, signed and sealed by (1), the testator therein named, and duly published and declared by him to be Codicil No. 1 to his Last Will and Testament and his free act and deed in the presence of them, who at his request and in his presence and in the presence of each other did subscribe their names as witnesses, and they and each of them also did certify and state that the signature of said testator was duly made and appeared to them on the Codicil before they signed as witnesses as aforesaid, and that they and each of them do believe said testator to be at this time of sound mind and memory.

Subscribed and sworn to before me, a Notary Public in and for the County and State aforesaid, this _____ day of _____, 20____.

My commission expires _____.

Notary Public

[Notarial Seal]

XIII. RELATED DOCUMENTS

§18.1 Explanation. There are several related documents which a lawyer should suggest that his client consider executing at the time the client executes a will, such as a declaration or living will, a durable or springing power of attorney and an anatomical gifts form.

§18.2 Living Will. Provisions are made in W.Va. Code §16-30-1 through 16-30-10 for a declaration or "living will". The following form is adapted from the statute which was revised in 2000. The West Virginia State Bar has published the statutory form, as amended in 2000, in a publication entitled "Advance Directives for Healthcare Decision-Making In West Virginia".

STATE OF WEST VIRGINIA
LIVING WILL

The Kind of Medical Treatment I Want and Don't Want
If I Have a Terminal Condition or
Am In a Persistent Vegetative State

Living will made this _____ day of _____, 20____.

I, (1), of _____, _____ County, West Virginia, being of sound mind, willfully and voluntarily declare that I want my wishes to be respected if I am very sick and not able to communicate my wishes for myself. In the absence of my ability to give directions regarding the use of life-prolonging medical intervention, it is my desire that my dying shall not be prolonged under the following circumstances:

If I am very sick and not able to communicate my wishes for myself and I am certified by one physician who has personally examined me to have a terminal condition or to be in a persistent vegetative state (I am unconscious and am neither aware of my environment nor able to interact with others), I direct that life-prolonging medical intervention that would serve solely to prolong the dying process or maintain me in a persistent vegetative state be withheld or withdrawn. I want to be allowed to die naturally and only be given medications or other medical procedures necessary to keep me comfortable. I want to receive as much medication as is necessary to alleviate my pain.

SPECIAL DIRECTIVES OR LIMITATIONS ON THIS DECLARATION:

When, in the opinion of the physician who has personally examined me, life prolonging intervention offers no medical hope of benefit, as a part of withholding or withdrawing life-prolonging intervention, it is my desire that hydration and nutrition be discontinued. I consent to the giving of a do not resuscitate order by the attending physician if he/she has made the determination that such an order should be given.

If I have executed a Medical Power of Attorney (MPA) concurrently, prior to, or subsequent to the execution of this Living Will and at the time a medical treatment decision is to be made as provided for in this Living Will, the holder of the MPA is present, competent, and willing to make medical treatment decisions authorized by the MPA, the medical treatment decisions of the holder of the MPA shall take precedence over the provisions of this Living Will.

It is my intention that this Living Will be honored as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences resulting from such refusal.

I understand the full import of this Living Will.

Signed:

(1)

Address:

I did not sign the principal's signature above for or at the direction of the principal. I am at least eighteen years of age and am not related to the principal by blood or marriage, entitled to any portion of the estate of the principal to the best of my knowledge under any will of the principal or codicil thereto, or directly financially responsible for principal's medical care. I am not the principal's attending physician or the principal's medical power of attorney representative or successor medical power of attorney representative under a medical power of attorney.

Witness:

Address:

Witness:

Address:

STATE OF WEST VIRGINIA

COUNTY OF _____

I, _____, a Notary Public of said County,
do certify that (1), as principal, and _____,
_____ and _____
witnesses, whose names are signed to the writing above bearing date on the _____ day of
_____, 20____, have this day acknowledged the same before me.

Given under my hand this _____ day of _____, 20____.

My commission expires: _____.

Notary Public

[Notarial Seal]

§18.3 Springing Durable Power of Attorney for Business with Conservator Nomination. The durable power of attorney with conservator nomination is provided for in W.Va. Code §§ 39-4-1 through 39-4-7.

SPRINGING DURABLE POWER OF ATTORNEY FOR BUSINESS
WITH COMMITTEE NOMINATION

Pursuant to the West Virginia Durable Power of Attorney Act, I, (1), of _____, West Virginia, do hereby make, constitute and appoint (3), (4), of (5), West Virginia, my true and lawful attorney-in-fact, which power shall become effective only upon my disability or incapacity, for me and in my name and in my behalf:

1. To ask, sue for, recover, and receive all manner of goods, chattels, debts, rents, interest, sums of money, and demand whatsoever, due or hereafter to become due and owing, or belonging to me, and to make, give, and execute acquittances, receipts, releases, satisfaction, or other discharges for the same, whether under seal or otherwise;

2. To make, execute, endorse, accept, and deliver in my name or in the name of my said attorney-in-fact all checks, notes, drafts, warrants, acknowledgments, agreements, tax returns and all other instruments in writing, of whatsoever nature, as to my said attorney-in-fact may seem necessary to conserve my interests;

3. To execute, acknowledge and deliver any and all contracts, deeds, leases, assignments of mortgage, extensions of mortgage, satisfactions of mortgage, releases of mortgage, subordination agreements, and any other instrument or agreement of any kind or nature whatsoever, in connection therewith, and affecting any and all property presently mine or hereafter acquired, located anywhere, which to my said attorney-in-fact may seem necessary or advantageous for my interests;

4. To buy or sell shares of stock or other securities of corporations or other organizations; to register any shares of stock or other securities of corporations or other organizations belonging to me, either in my name or in the name of one or more nominees; to vote any shares of stock owned by me, either in person or by proxy, upon all questions which it is proper for stockholders to consider and vote upon; to assert or waive any stockholder's right or privilege with respect to any or all shares held by me, including any right or privilege to subscribe for or acquire additional stock in a company whose shares are held by me; to consent to the merger, reorganization, consideration, or readjustment of the financial structure or sale of the assets of any corporation or other organization the stock or securities of which constitute a portion of my estate; and to unite with other owners of similar properties, stocks, or securities, in any plan, agreement, or deposit, to effectuate any merger, consolidation, reorganization, or dissolution of any such corporation or other organization; to enter into any voting trust or other lawful agreement to concentrate or unify the control of any stock of such corporation or other organization embodying such terms and conditions as may appear acceptable to my attorney-in-fact and to deposit the shares or interests held by me on any such trust or agreement, all as my attorney-in-fact and to deposit the shares or interests held by me on any such trust or agreement, all as my attorney-in-fact and to deposit the shares or interests held by me on any such trust or agreement, all as my attorney-in-fact, in his/her uncontrolled discretion, may deem prudent;

5. To enter into and take possession of any lands, real estate, tenements, houses, stores, or buildings, or parts thereof, belonging to me, that may become vacant or unoccupied, or to the possession of which I may be or may become entitled, and to receive and take for me and in my name and to my use all or any rents, profits, or issues of any real estate to me belonging, and to let the same in such manner as to my attorney-in-fact shall deem necessary and proper, and from time to time to renew leases;

6. To commence, and prosecute in my behalf, any suits or actions or other legal or equitable proceedings for the recovery of any of my lands or for any goods, chattels, debts, duties, demand, cause or thing whatsoever, due or to become due or belonging to me, and to prosecute, maintain, and discontinue the same, as he/she shall deem proper;

7. To take all steps and remedies necessary and proper for the conduct and management of my business affairs, and for the recovery, receiving, obtaining, and holding possession of any lands, tenements, rents or real estate, foods and chattels, debts, interest, demands, duties, sum or sums of money or any thing whatsoever, located anywhere, that is, are, or shall be, by my said attorney-in-fact, thought to be due, owing, belonging to or payable to me in my own right or otherwise;

8. To appear, answer, and defend in all actions and suits whatsoever which shall be commenced against me and also for me in my name to compromise, settle, and adjust, with each and every person or persons, all actions, accounts, dues, and demands, subsisting or to subsist between me and them or any of them, and in such manner as to my said attorney-in-fact shall deem proper; hereby giving to my said attorney-in-fact power and authority to do, execute, and perform and finish for me and in my name all those things which shall be expedient and necessary, or which my said attorney-in-fact shall judge expedient and necessary in and about or concerning the premises, or any of them, as fully as I could do if personally present, hereby ratifying and confirming whatever my said attorney-in-fact shall do or cause to be done in, about, or concerning the premises, and any part thereof;

9. To sign and file on my behalf, all federal, state and local income tax returns, gift tax returns and all other tax returns and forms and to receive and inspect confidential tax information and to perform any and all acts that I can perform with respect to tax matters, for example, the authority to sign any agreements, consents, or other documents; pursuant to this authority, this document shall be deemed to have the same effect as a Power of Authority and Declaration of Representative executed in accordance with Internal Revenue Service (IRS) Form 2848 (Rev. February 1993), or a subsequent revision thereof; if the IRS determines that the above language is insufficient to authorize my attorney-in-fact to act on my behalf in dealing with the revision thereof, on my behalf authorizing herself/himself or another individual to act as my representative before the IRS;

10. To employ attorneys, accountants, investment advisors, specialists and such other agents as my said attorney-in-fact shall deem necessary or desirable; to employ an

investment manager or managers to manage all or any part of my assets under the supervision of my said attorney-in-fact; and to charge the compensation of such attorneys, accountants, investment advisors, investment managers, specialists and other agents and any other expenses against my assets;

11. To make equal gifts to my children on my behalf in amounts not to exceed the Annual Gift Tax Exclusion prescribed by the Internal Revenue Code, as it may be fixed from time to time. If one of my children shall have died prior to the date on which my attorney-in-fact make gifts in a particular year, a gift equal to the amount being transferred to the surviving children shall be allocated among the grandchildren through my deceased child so that such gifts to my children and grandchildren are made to them on a per stirpes basis, if my attorney-in-fact believes that the making of such gifts will be beneficial to my children and grandchildren, and will reduce the Federal and State Estate Tax applicable to the property which is expected to pass to them. My attorney-in-fact is also authorized to consent on my behalf on Federal Gift Tax Returns filed by my spouse to gifts made to my children and grandchildren by my spouse;

12. This instrument shall be construed and interpreted as a general power of attorney. The enumeration of specific items, rights, acts, or powers herein shall not limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to said attorney-in-fact;

13. The powers herein granted by the undersigned to my attorney-in-fact shall not be affected or terminated by my disability or incompetence which may hereafter occur. If my attorney-in-fact desires to confirm my disability or my incompetency, (8) may rely upon the written opinion of my attending physician or a determination by the Circuit Court for the County in which I reside, that I do not have the mental or physical capacity to handle my business affairs;

14. If (3), (4), should die, resign, become incompetent or incapacitated, I hereby designate (9), (10), as my true and lawful attorney-in-fact with the same power and authority as if named in this document instead of (3), (4). If (9), (10), should die, resign, become incompetent or incapacitated, I hereby designate (11), (12), as my true and lawful attorney-in-fact with the same power and authority as if named in this document instead of (3), (4);

15. If protective proceedings for my estate or financial affairs are hereafter commenced, the same person who is serving as my attorney-in-fact under this power of attorney is hereby nominated herein to be appointed as conservator of my estate and financial affairs. I request that bond be waived for any person nominated herein to be appointed as the conservator of my estate and financial affairs. The appointment of a conservator of my estate and financial affairs or other fiduciary for me shall not terminate the authority herein granted to my attorney-in-fact; however, this power of attorney shall then be subject to the power of the conservator of my estate and financial affairs or other fiduciary to amend or revoke this power of attorney;

16. A photostatic copy of this power of attorney may be relied upon by any person in the same manner as if such copy were an executed original.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of _____, 20____.

(1)

STATE OF WEST VIRGINIA,

COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by (1).

My commission expires _____.

Notary Public

[Notarial Seal]

§18.4 Durable Medical Power of Attorney. W.Va. Code §§ 16-30A-1 *et seq.* provides for the durable medical power of attorney. This form is adapted from the statute which was revised in 2000. The West Virginia State Bar has published the statutory form, as amended in 2000, in a publication entitled "Advance Directives for Healthcare Decision-Making in West Virginia".

STATE OF WEST VIRGINIA
MEDICAL POWER OF ATTORNEY

The Person I Want to Make Health Care Decisions
For Me When I Can't Make Them for Myself

Dated: _____, 20____.

I, (1), of (2), telephone number (3), hereby appoint my (4), (5) of (6),
telephone number (7), as my representative to act on my behalf to give, withhold or withdraw
informed consent to health care decisions in the event that I am not able to do so myself. If
my representative is unable, unwilling or disqualified to serve, then I appoint (8), of (9),
telephone number (10), as my successor representative.

This appointment shall extend to, but not be limited to, decisions relating to
medical treatment, surgical treatment, nursing care, medication, hospitalization, care and
treatment in a nursing home or other facility, and home health care. The representative
appointed by this document is specifically authorized to act on my behalf to consent to, refuse
or withdraw any and all medical treatment or diagnostic procedures, or autopsy, if my
representative determines that I, if able to do so, would consent to, refuse or withdraw such
treatment or procedures. Such authority shall include, but not be limited to, the withholding
or withdrawal of life-prolonging interventions.

I appoint this representative because I believe this person understands my
wishes and values and will act to carry into effect the health care decisions that I would make
if I were able to do so, and because I also believe that this person will act in my best interests

(Initials)

when my wishes are unknown. It is my intent that my family, my physician and all legal authorities be bound by the decisions that are made by the representative appointed by this document, and it is my intent that these decisions should not be the subject of review by any health care provider, or administrative or judicial agency.

It is my intent that this document be legally binding and effective and that this document be taken as a formal statement of my desire concerning the method by which any health care decisions should be made on my behalf during any period when I am unable to make such decisions.

If protective proceedings for my person are hereafter commenced, I nominate the same person named herein as my representative as guardian of my personal affairs; provided, however, if that person should die, resign or become incompetent, I hereby nominate the person appointed as my successor representative as guardian of my personal affairs. I request that bond be waived for any person nominated herein to be appointed as the guardian of my personal affairs. The appointment of a guardian or other fiduciary for me shall not terminate the authority herein granted to my representative.

In exercising the authority under this medical power of attorney, my representative shall act consistently with my special directives or limitations as stated below.

SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER:

When, in the opinion of one physician who has personally examined me, life-prolonging intervention offers no medical hope of benefit:

1. If I am determined to be terminally ill and permanently incompetent, it is my desire that life-prolonging intervention be withheld or withdrawn.

(Initials)

2. Whether or not I am determined to be terminally ill, if I am permanently unconscious it is my desire that life-prolonging intervention be withheld or withdrawn.

3. Whether or not I am determined to be terminally ill, if I am unconscious and have very little chance of recovering consciousness and would almost certainly be very brain damaged if I did recover consciousness, it is my desire that life-prolonging intervention be withheld or withdrawn.

4. As a part of withholding or withdrawing life-prolonging intervention under the conditions described in the three (3) preceding paragraphs, it is my desire that hydration and nutrition be discontinued under those circumstances.

5. It is my desire that my attorney-in-fact make gifts of such portions of my body organs, body parts or tissue that may be useful for improving the medical condition of others.

6. If the state in which I am residing at the time I become incapacitated refuses to recognize this Medical Power of Attorney (MPA), I authorize the holder of this MPA to physically remove my person to another jurisdiction which will recognize this MPA.

7. I authorize the holder of this MPA to make funeral arrangements and burial arrangements on my behalf prior to my death to expedite these arrangements following my death.

8. I authorize the holder of this MPA to consent to the giving of a do not resuscitate order by my attending physician if such attending physician has made the determination that such an order should be given.

THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN MEDICAL CARE.

These directives shall supersede any directives made in any previously executed document concerning my health care.

(1)

I did not sign the principal's signature above. I am at least eighteen years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal or to the best of my knowledge under any will of the principal or codicil thereto, or legally responsible for the costs of the principal's medical or other care. I am not the principal's attending physician, nor am I the representative or successor representative of the principal.

WITNESS:

DATE:

_____, 20____

WITNESS:

DATE:

_____, 20____

STATE OF WEST VIRGINIA,

COUNTY OF _____, to-wit:

I, _____, a Notary Public of said County, do certify that (1), as principal, and _____ and _____, as witnesses, whose names are signed to the writing above bearing date on the ____ day of _____, 20____, have this day acknowledged the same before me.

My commission expires: _____.

Notary Public

[Notarial Seal]

§18.5 Anatomical Gifts. W.Va. Code §§ 16-19-1 through 16-19-9 makes provision for anatomical gifts in accordance with the Uniform Anatomical Gift Act. This form is adapted from the statute.

UNIFORM DONOR CARD
OF

(Print or type name of donor)

In the hope that I may help others, I hereby make this anatomical gift, if medically acceptable, to take effect upon certification of my death. The words and marks below indicate my desires.

I give (a) _____ any needed organs or parts;
(b) _____ only the following organs or parts:

(Specify the organ(s) or part(s))

for the purposes of transplantation, therapy, medical research or education;
(c) _____ my body for anatomical study if needed.

Limitation or special wishes, if any:

Signed by the donor and the following two witnesses in the presence of each other:

(Signature of Donor)

(Date of Birth of Donor)

(Date Signed)

(City and State)

(Witness)

(Witness)

This is a legal document under the Uniform Anatomical Gift Act or similar laws.

