ANNOTATED WILL

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LAST WILL OF

[TESTATOR'S NAME]

I, __________________________, domiciled in __________________________ County, North Carolina, declare this to be my last will, hereby revoking all wills and codicils heretofore made by me.

At the time of the execution of this Will, my immediate family group consists of my children, [names of children].

I.

I direct that all my just debts, my funeral and burial or cremation expenses, and the cost of administration of my estate be paid out of the assets of my estate as soon as practicable after my death. However, I direct that my Executor may cause any debt to be carried, renewed and refinanced from time to time and upon such terms as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. Provided further that

The purpose of this naming of the family group is to provide evidence that the testator is aware of the "natural objects of his [or her] bounty," as required by statute.

Normally, keep this to first degree relatives (children, parents, siblings). Some people will want to name a non-relative (such as a partner) as a member of his or her immediate family. If your client wants to do this, discuss it with your supervisor.

Even if the client did not direct that debts and funeral expenses be paid, the law requires that they be paid before beneficiaries can inherit. This provision, however, does give the executor authority to try to work with creditors to refinance debts and refrain from paying any debts that are barred by the statute of limitations.
any debts that could be barred by the applicable statutes of limitation shall not be paid as a debt of my estate.

II.

I direct that all taxes (including any interest and penalties thereon) imposed by any taxing authority because of my death shall be paid by my executor out of my residuary estate, specifically including taxes on life insurance and other non-probate assets.

TAXES

For all of our clients, there is no estate tax, because of the small size of the estate. Whatever taxes (e.g. the testator’s income taxes) are due, however, must be paid even without specific authorization in the will. Nevertheless, this is a standard will clause. This clause can be modified if the testator does not wish to have taxes on life insurance and other non-probate assets paid out of the residuary estate.

III.

I give my tangible personal property, including my automobiles, in shares of equal value to my children who survive me. If any of my children predecease me, then that child’s share shall be distributed equally among my surviving children. If none of my children survive me, I give the same to [alternate beneficiary].

My executor shall have the sole discretion to divide the property among my children, taking into consideration their wishes.

TANGIBLE PERSONAL PROPERTY

Tangible personal property should be distributed in a separate clause from the remaining property distributed under the will. The distinction is made to alleviate a tax problem that is unlikely to affect our clients, but we write the will this way just in case.

Use this paragraph if the testator wants all of his tangible personal property to be distributed to a particular individual or a group of individuals in shares. If the testator
wants to distribute individual items of tangible property to certain individuals, however, a clause setting out that distribution should precede this general paragraph and this paragraph should be modified to say, "I give all the rest of my tangible personal property to . . . "

Put specific bequests first. Then provide for the rest of the tangible personal property.

If there is only one beneficiary, the second sentence, "[m]y executor shall have the sole discretion to divide the property among my children, taking into consideration their wishes," is inapplicable and should be removed.

If at all possible, include an alternate beneficiary if possible, in case the primary beneficiary dies before the client.

**PROVISION FOR TANGIBLE PERSONAL PROPERTY FOR MINORS**

If this provision is omitted, only tangible personal property worth $1,500 or less can be distributed directly to the custodian of a child; property worth more than $1,500 cannot be distributed until a guardian is appointed and a bond paid.

If any beneficiary of my tangible personal property has not reached the age of 18 at the time of my death, my executor shall deliver that minor child's share, regardless of value, to that child's parent, legal guardian or other adult who has custody of him or her, and that person's receipt shall operate as a full release of my executor.
I may leave a writing which, although not a part of my will, expresses my desires concerning the disposition of certain items of my tangible personal property. I request, but do not require, that my wishes as set forth in any such writing be observed.

OPTIONAL PARAGRAPH WHERE PROPERTY LEFT TO EXECUTOR WITH INSTRUCTIONS TO DIVIDE PURSUANT TO A WRITING

If the testator has many small items of personal property that he or she would like to distribute to a variety of individuals, we recommend the technique of adding an addendum to the will.

Normally, in that situation, the testator would leave his or her tangible personal property to the executor. The executor would then distribute the items, in his or her discretion, using the testator's list.

The recipients named on the list do not have an enforceable right to the items listed; the property technically belongs to the executor. But if the executor is trustworthy, he or she will follow the wishes as stated. This technique is advantageous because the list can be changed frequently without redoing the will if property if damaged or sold or if the testator's wishes change.

This paragraph is not used if the property is being left to specific people in this paragraph.
IV.

I give all of the rest, residue and remainder of my property of every sort, kind and description, both real and personal, absolutely and in fee simple, in equal shares, to my children who survive me and who have reached the age of 18. If any of my children predecease me, then that child’s share shall be distributed equally among my remaining children. If any of my children have not reached the age of 18 at the time of my death, then and in that event, I give absolutely and in fee simple the shares of any such child to my Trustee(s), hereinafter named, IN TRUST, pursuant to the terms of Article V of this will.

My Executor shall have the sole discretion to divide the property among my children, taking into consideration their wishes.

If none of my children survive me, I give the same to ________________________ .

V.

If property is distributed to my Trustee under the terms of this will, it shall be

RESIDUARY CLAUSE

This clause distributes everything that has not yet been distributed in the previous paragraphs. If the testator wants to make specific gifts of intangible property and real estate, then the clause or clauses setting out those bequests would precede this paragraph. If those items are to go to the residuary beneficiary, it is not necessary to include specific paragraphs distributing those items.

Even if the testator has mentioned all the property he or she owns, a residuary clause is important to take into account property acquired after the will is written or forgotten property.

When the children are minors, or below the age at which the client wants the children to receive their inheritance, the property should be distributed to a trust, as mentioned, to allow maximum flexibility with regard to management and accessibility of the inheritance.

TRUST FOR MINOR CHILDREN

The default clause regarding the purpose of the trust is broad, so that the trustee can use the money for the general support and education. The
administered pursuant to the following terms and conditions:

A. **Purpose of Trust.** The purpose of this trust is to provide for the support and education of my children who survive me.

The purpose of the trust can be narrowed to match any goals the testator has. The testator must realize that any narrowing takes discretion from the trustee and may make it impossible for the trustee to use the money in an emergency, if the emergency is outside the terms of the trust.

This will sets up one trust for all the children. The trustee can then distribute the funds based on the needs of each child – the distribution need not be equal. If the client wants a set amount to go to each of the minors, it would be necessary to set up separate trusts for each child.

B. **Appointment of Trustee.** I name __________________________ of [County & State of Trustee's residence] as Trustee. If the appointment of a substitute or successor Trustee becomes necessary, I name [Name of alternate Trustee] of [County & State of alternate's residence]. If the appointment of additional successor Trustees is necessary, the last serving Trustee shall have the right to make such appointment, without court order, in a writing signed by the last serving Trustee. Any Trustee shall have the right to resign, without court order, at any time in a writing signed by the Trustee with such resignation to be effective upon the acceptance of the trusteeship by a successor Trustee.

**TRUSTEE**

The client should be encouraged to appoint both a primary trustee and an alternate, if there are two suitable candidates. The trustee need not be a professional person, but should have the skills to maintain a bank account and be able to keep track of the money spent on the children.
C. **Insurance Proceeds.** Any insurance company or other parties who shall become indebted to any minor child of mine on account of my death, are hereby expressly directed to pay the funds to my Trustee(s) named herein, for the benefit of such child to the same extent as if that party had been appointed by the Court as Guardian of my child.

This might come into play if the parent died in an automobile accident and the child was entitled to a personal injury award from the defendant's insurance company.

This provision will not be enough, however, to get the proceeds of the parent's life insurance policy to the trustee. **The parent must change the beneficiary on the life insurance policy from the children directly to the trustee.** You should assist with this process.

D. **Powers of Trustees.** The Trustees shall have full and complete discretion to use the principal and income of the trust in the manner the Trustee best sees fit for the benefit of my surviving children. Without in any way limiting the foregoing purposes, powers and authority, the Trustees shall have all of the powers set forth and described in Article 3, Chapter 32 of the General Statutes of North Carolina relating to the powers of fiduciaries as they exist at the time I sign this will, which are hereby incorporated into this will. The Trustees shall not be required to file in any court or with any public officials or to the beneficiaries of the trust, any reports or accounts relating to the administration of the trusts, except to the extent I have no powers to excuse the filing of such reports or accounts. I direct that no bond or other

**TRUSTEE POWERS**

The default provision here gives the maximum flexibility to the trustee and waives the mechanisms for protection of the children against a trustee who abuses his or her fiduciary duty. Some testators may wish to limit the discretion of the trustee, or to require either that a bond be paid to protect the trust assets or that annual accountings be made either to the Clerk of the Court or to some other designated person.
security be required of my Trustee or any successor Trustee for the performance of duties as the Trustee.

E. **Termination of the Trust.** The trust shall terminate when the youngest child who is the beneficiary of the trust reaches the age of [any age 18 and up] or is no longer living. Upon termination, the remaining principal and income of the trust shall be distributed by the Trustee to the children who are the beneficiaries of the trust, with the share of any child who is not living at the termination of the trust to go to that child's issue, if any, and if there are no issue, then that share to be distributed by the trustee to those of my children then living in such shares as the trustee shall determine in the Trustee's sole discretion.

F. **Payment by Executor to Trustee.** The written receipt of the Trustee shall operate as a full release and discharge of my Executor of the property transferred by the Executor to the Trustee.

VI.

I nominate [name of guardian] of [County & State of guardian] as guardian of the persons of my children who are unmarried minors at the time of my death. If the appointment of a substitute or successor guardian becomes necessary, I appoint [name of alternate

TRUST TERMINATION
Be sure to ascertain from the testator at what age the children should be when the assets of the trust are distributed. It can be any age over 17. Usually, the trust stays intact until the youngest child has reached the designated age, but the testator may prefer another arrangement.

NOMINATION OF GUARDIAN
This provision does not, in and of itself, appoint the guardian. The appointment is made by the Clerk of the Court. The parent's will is a strong guide to the Clerk, however. The parent need not waive the bond if he or she would prefer that added measure of security.
guardian] of [County & State of alternate guardian] as guardian. I direct that no bond or other security be required of the guardian in any jurisdiction for the performance of the duties as guardian.

VII.

If any beneficiary and I should die under circumstances as would render it doubtful whether the beneficiary or I died first, or if any beneficiary should die within thirty (30) days of me, then it shall be conclusively presumed for purposes of this my will that said beneficiary predeceased me.

VIII.

In this Will, the terms "executor" and "testator" are used to refer to both male and female individuals, in lieu of using the terms "executrix" and "testatrix."

IX.

I appoint my __________, __________________________, of __________ County, __________ to be executor of this my last will. If my __________, __________________________, shall predecease me or for any reason shall fail to qualify as executor hereunder, or having qualified, shall die or resign, then I appoint my __________________________, ________________, of __________

SIMULATANEOUS DEATH
This paragraph allows the property to go to the testator's heirs rather than the heirs of the predeceased beneficiary.

EXECUTOR APPOINTMENT
The executor should be someone who has the skills to present the will to the Clerk of the Court and handle court forms. The executor should be literate and able to understand the concept of operating in a fiduciary capacity. The waiver of bond can be omitted if the testator is concerned that the executor

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County, __________________ as substitute or successor executor. My executor, and any successor, shall serve without bond.

X.

I give and grant to my Executor and to any successor Executor all of the powers enumerated in North Carolina General Statutes Section 32-27 and Section 28A-13-3, which powers are hereby incorporated by reference and shall be considered a part of this Will. These powers are granted pursuant to North Carolina General Statutes Section 32-26 and shall be in addition to and not in limitation of the common law and statutory powers of fiduciaries.

XI.

Unless otherwise directed in this will, whenever the executor or the trustee of any trust under this will is directed to distribute any money or property, other than my tangible personal property, to a person who is under twenty-one years of age on the date of such distribution, the executor or trustee shall be authorized to make such distribution to an adult person duly appointed by such executor or trustee as Custodian for such person under the North Carolina Uniform Transfer to Minors Act Clause. This is a "just in case" paragraph, so that money ending up being owned by a minor does not get locked up in the courthouse.
Uniform Transfers to Minors Act.

I, [Testators’ name], the testator, sign my name to this instrument this ___ day of_____________________, 201___ [Current year], and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), 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’s 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 signs or places her mark before me and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator’s signing, and to the best of our knowledge, the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.
WITNESS

WITNESS

STATE OF NORTH CAROLINA

COUNTY OF _______________________

Subscribed, sworn to and acknowledged before me by [Testators’ name] the testator, and subscribed and sworn to before me by witnesses, ___________________________.

and __________________________ this ____________ day of 201___.[Current year].

_____________________________   (SEAL)
Notary Public

My Commission expires:_________________