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Legal Forms & Services

FirstName LastName

SOUTH DAKOTA  
LAST WILL & TESTAMENT

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The answers you provide in the questionnaire are incorporated in this document at your direction. The form was developed by attorneys based on the laws of your state. You are responsible for finalizing the document and having it reviewed by an attorney.

**Finalizing a Last Will & Testament in South Dakota**

After printing your document, you will need to finalize it with signatures. Below are the steps:

1. Print out your document
2. Review, initial, sign, and date in front of two witnesses and a notary
3. Have witnesses sign and date
4. Have notary sign and date
5. Keep document in a safe place

**Notice:** Some state laws void a gift, bequest, or appointment to an interested witness, the spouse of an interested witness, or an heir of an interested witness. To avoid that result, you should review your state laws or consider selecting only disinterested witnesses. Disinterested typically means an individual, their spouse, and/or their heirs will not inherit under, will not be appointed in any manner, or who have no financial or other interests in, the will.

**LAST WILL AND TESTAMENT  
OF  
FirstName LastName**

I, FirstName LastName, of City, South Dakota, being of sound mind, declare this to be my LAST WILL AND TESTAMENT. I revoke all prior wills and codicils previously made by me.

**MY FAMILY**

**My Spouse.** I am married. My spouse is FirstName LastName. Any reference to “my spouse” in this will refers to this person unless we are no longer married at the time of my death. If I am married to someone else at the time of my death, “my spouse” will refer to that person.

**My Children.** I have the following children:

FirstName LastName  
FirstName LastName  
FirstName LastName

All references in this will to “my children” are to my children named above and any other children of mine born or adopted after the signing of this will, and any of my spouse’s children adopted by me. All references to “my descendants” are to my children and their descendants.

I have carefully considered those I wish to benefit from this will. My failure to provide for anyone not named, whether now living or born after the date of this will, is intentional and not caused by accident or mistake.

**PAYMENT OF DEBTS, ESTATE ADMINISTRATION, AND TAXES**

I direct my personal representative to pay all valid claims against my estate. This includes but is not limited to my legal debts, expenses for funeral, memorial, burial, and last illness, expenses of administration of the estate, any owed state and federal taxes, as well as any inheritance, estate, or other death taxes and associated interest and penalties. I authorize my personal representative to maintain real estate as needed, and complete improvements if needed for the sale of the real property. I authorize my personal representative to pay as an expense of the estate the cost of selling, advertising for sale, packing, shipping, and insuring any property of the estate.

**SPECIFIC GIFTS**

I give the following gifts from my estate:

**Personal Property.**

I give a gift of Lenox Federal Platinum china set to FirstName LastName, with a current address of 222 Street Address, City, South Dakota 11111.

I give a gift of Reed & Barton silverware and chest to FirstName LastName, with a current address of 222 Street Address, City, South Dakota 11111.

I give a gift of Ping golf club set to FirstName LastName, with a current address of 333 Street Address, City, South Dakota 11111.

**Monetary Gifts.**

I give a gift of \$5,000.00 to FirstName LastName, with a current address of 444 Street Address, City, South Dakota 11111. If FirstName LastName does not survive me, I give this gift to FirstName LastName, with a current address of 555 Street Address, City, South Dakota 11111.

**Charitable Bequests.**

I give a gift of \$10,000.00 to Charity, a nonprofit organization with a current address of 666 Street Address, City, South Dakota 11111.

If any named charity organization does not exist at the time of my death, or if such organization is not at that time an organization described in the Internal Revenue Code section 2055, the gift to said organization will lapse and the personal representative shall distribute that gift to an organization identified by the personal representative with a similar purpose and function that then exists and is described in the Internal Revenue Code section 2055.

**Tangible Personal Property List.**

I may draft a tangible personal property list in which I may dispose of items of tangible personal property, excluding cash. This list will describe the items and recipients with reasonable certainty and will be signed and dated by me and stored with this will. I may change or update this list at any time after the execution of this will, and only the latest writing will be effective at the time of my death. Should no such writing be discovered after 30 days from my death, I direct that my tangible personal property shall become a part of my residuary estate to be given to the beneficiaries named herein.

**Real Estate.**

I give the real property located at 111 Street Address, City, State, ZIP to FirstName LastName, with a current address of 222 Street Address, City, South Dakota 11111. If FirstName LastName does not survive me, I give this gift to FirstName LastName, with a current address of 333 Street Address, City, South Dakota 11111. This gift includes all interests in property, including buildings, fixtures, and improvements to the property, including all real property contiguous to or used in connection with such property, whether evidenced by deed or otherwise, and including all insurance policies related to it. This gift is subject to any mortgage on the property existing at the time of my death.

**Pets.**

I give to FirstName LastName, with a current address of 777 Street Address, City, South Dakota 11111, any pet(s) I own at the time of my death, along with the sum of \$6,000.00, to provide for the care of my pet(s). If FirstName LastName is unwilling or unable to take my pet(s), I give to FirstName LastName, with a current address of 888 Street Address, City, South Dakota 11111, my pet(s) along with the money. If none of my nominees are able or willing to take my pet(s), then the personal representative shall find a suitable home for them.

If any of these beneficiaries do not survive me, then any property they would have received shall lapse and become part of the residuary estate. The cost of packing, shipping, and/or delivering the above gifts shall be paid out of the residuary estate.

## **RESIDUARY ESTATE**

I give my entire residue and remainder of my estate as follows:

To FirstName LastName, if they survive me. If FirstName LastName does not survive me, I give, devise, and bequeath the same to my children, in equal shares.

All gifts of the residuary estate are given per stirpes. However, if a beneficiary predeceases me and does not have any children, that beneficiary's gift will be distributed pro rata to the remaining beneficiaries who survive me.

If any property cannot be reasonably distributed, sold, or donated, my personal representative may dispose of such property at their sole discretion without liability.

## **PERSONAL REPRESENTATIVE**

**Personal Representative.** I appoint FirstName LastName, with a current address of 222 Street Address, City, South Dakota 11111, to be the personal representative of my will and estate. They can be currently reached at 1111111111 or emailaddress@email.com.

If they are unable or unwilling to serve for any reason, I appoint FirstName LastName, with a current address of 333 Street Address, City, South Dakota 11111. They can currently be reached at 1111111111 or emailaddress@email.com. Unless removed for cause, the last personal representative in office shall have the right to appoint their successor personal representative subject to court approval.

**Bond.** There shall be no requirement for my personal representative to post bond or security.

**Reimbursement and Compensation.** My personal representative shall be entitled to reimbursement for out-of-pocket expenses incurred in the administration of my estate, as well as reasonable compensation for time spent on the administration of my estate.

**Powers of Personal Representative.** In addition to all the powers given to them by state law, I authorize my personal representative to perform any act in the best interest of my estate, including:

- To retain, sell, lease, or otherwise exercise authority over any real estate in my estate, and to sell without license of the probate court;
- To employ lawyers, accountants, and other professionals as my personal representative may find necessary, and to pay professional fees as an expense of administration;
- To otherwise have the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate, and to exercise that power without notice, hearing, or order of the court;

- To serve as custodian under any applicable Uniform Gifts to Minors Act; and
- To access and otherwise exercise authority over my digital assets in accordance with state law including email, social media, or other online accounts, for the purpose of settling my estate and permanently closing the accounts on my behalf.

## **GUARDIAN DESIGNATIONS**

**Guardian.** At the time of my death, if my children are under the legal age of majority and it is necessary to designate custody of my children during their minority, I appoint FirstName LastName, with a current address of 777 Street Address, City, South Dakota 11111 to be granted custody of my children and to serve as guardian of my children. They can currently be reached at 1111111111 or emailaddress@email.com.

If they are unable or unwilling to serve for any reason, I appoint FirstName LastName, with a current address of 888 Street Address, City, South Dakota 11111. They can currently be reached at 11111 or emailaddress@email.com. The last appointed guardian shall have the right to appoint their successor guardian.

**Bond.** There shall be no requirement for my guardian to post bond or security.

## **DEFINITIONS AND GENERAL PROVISIONS**

**Definitions.** As used in this will, these words have the following meanings:

- **Per Stirpes.** Property to be distributed “per stirpes” means the property is divided into as many equal shares as there are (i) children of the designated ancestor who survived the distribution date, if any, and (ii) children of the designated ancestor who failed to survive the distribution date but who left descendants who survived the distribution date. Each surviving child is allocated one share. The share of each child who failed to survive the distribution date but who left descendants who survived the distribution date is allocated in the same manner, with subdivision repeating at each succeeding generation until the share is fully allocated among surviving descendants. For purposes of this section, “distribution date” means the time when the interest is to take effect in possession or enjoyment.
- **Descendants.** Except as provided in this will, references to “descendant” or “descendants” mean lineal blood descendants of the ancestor designated and shall include descendants who have been conceived, at any specific point in time and who survived birth; and further shall include both a person legally adopted when a minor and a minor person in the process of being adopted by my descendant.

- **Personal Representative.** References to “personal representative” includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

**Advancements.** Any gifts of real or personal property which I shall have made during my life, before or after the execution of this will, to any person, shall not be deemed to be advancements and shall not be taken into account in settling my estate.

**Simultaneous Death.** If any beneficiary and I die from a common disaster or under such other circumstance where it is impossible to determine which of us died first, or if any beneficiary survives me but dies within 120 hours of my death, all my property passing to the beneficiary shall be disposed of as if the beneficiary had died before me.

**Inventory and Accounting.** No fiduciary will be required to file any inventory or accounting or other report with any court except as required by law. Nor will any fiduciary be required to audit or investigate the acts of any predecessor fiduciary or to make claims against them.

**Apportionment of Estate Taxes.** Any estate taxes shall be apportioned pro rata against the persons interested in the assets of my probate and non-probate estate. My personal representative shall seek reimbursement from said persons for their proportionate share of the estate taxes.

**Binding Agreement.** Any decision by my personal representative regarding any discretionary power in this instrument or provided by law shall be final and binding on all interested persons. Unless due to the personal representative’s own willful default or gross negligence, no personal representative will be liable for their own acts or omissions or those of any co-personal representative or personal representative preceding them.

**Controlling Law.** This will shall be governed by the laws of the state of South Dakota.

**Severability.** If any of the provisions of this will should be held invalid, the invalidity of such provisions shall not affect any of the other provisions hereof, it being my intention that each of the provisions shall be independent of the others.

**Headings, Gender, Singular/Plural.** The headings used are intended solely for reference and are not intended to be part of this will. Words of any gender shall include any other gender. Singular and plurals words shall be interchangeable.

I, FirstName LastName, declare that I sign and execute this instrument as my LAST WILL AND TESTAMENT (“Will”) and that I sign it willingly in the presence of the witnesses named below, and that I execute it as my free and voluntary act for the purposes therein expressed.

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FirstName LastName, Testator

111 Street Address, City, South Dakota, 11111

We, the undersigned, hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Testator declared to us that this instrument was the Testator's Will and requested us to act as witnesses to it; that the Testator signed the Will in our presence, all of us being present at the same time; that we now sign this Will as witnesses in the presence of the Testator, and in the presence of each other.

\_\_\_\_\_  
First Witness Name

\_\_\_\_\_

\_\_\_\_\_  
First Witness Address

\_\_\_\_\_  
Second Witness Name

\_\_\_\_\_

\_\_\_\_\_  
Second Witness Address

### **AFFIDAVIT**

I, FirstName LastName, the testator, 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 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.

\_\_\_\_\_  
FirstName LastName, Testator  
111 Street Address, City, South Dakota 11111



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 and executes this instrument as Testator's will and that Testator signs it willingly (or willingly directs another to sign for Testator), that Testator executes it as Testator's free and voluntary act for the purposes therein expressed, 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 that 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 Signature

\_\_\_\_\_  
Printed Name of Witness

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

\_\_\_\_\_  
Printed Name of Witness

State Of \_\_\_\_\_

County Of \_\_\_\_\_

Subscribed, sworn to, and acknowledged before me by FirstName LastName, the testator, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

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

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

MEMORANDUM OF SPECIFIC PERSONAL PROPERTY BEQUESTS

As South Dakota law allows for the disposition of specific tangible personal property by a separate writing, I hereby give the following gifts:

Item Description

Beneficiary and Current Address

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