



Dispositive and Fiduciary Clauses

- These are the heart of the Will.
- They tell who inherits what.
- They name an executor/executrix
- They name guardian(s) of person and property of minor children
- They provide fiduciary powers and tax provisions

Main Body

- Dispositive provisions
 - Specific legacy: gift of identifiable personal property
 - Subject to ademption: no gift if the asset does not exist at time of death
 - Personal property passes to personal representative, who distributes to heirs
 - Specific devise: a gift of identifiable real property
 - Real property passes directly to heirs

Main Body

- Dispositive provisions
 - General legacy: gift of personal property from general assets of estate
 - Gift of money that is general legacy is also known as pecuniary legacy
 - Demonstrative legacy: gift of a specific sum of money paid out of a particular fund

Main Body

- Dispositive provisions
 - Residuary clause
 - Distributes the rest of the estate not gifted
 - E.g., gift is void, gift is revoked, gift lapses
 - Without a residuary clause, failed gift would pass according to the law of intestacy

Main Body

- Miscellaneous clauses
 - Community property
 - Disinheritance
 - Not allowed for spouses
 - No contest
 - In terrorem: a provision discouraging a will contest from a beneficiary
 - Incorporation by reference: refer to another existing document



Fiduciary and Tax Provisions

- Personal representative
 - Executor or executrix of the estate
 - Person named as a fiduciary or trusted individual charged with following the instructions of the testator
 - Bond/surety
 - Used to protect estate from wrongdoing of the personal representative; like an insurance policy

Fiduciary and Tax Provisions

- Guardian
 - Guardian of person
 - Custody of child
 - Guardian of property
 - Care for property of child until child becomes adult
- Trustee
 - Testamentary trust: when will contains a trust, it is called a testamentary trust

Ending Paragraphs

- Testimonium Clause
 - Closing paragraph before signature
- Attestation Clause
 - Clause following testator's signature and precedes the witness signatures
- Self-Proof Clause
 - Statutory provision that allows the will to be self-proven and avoid the appearance of witnesses at time of probate

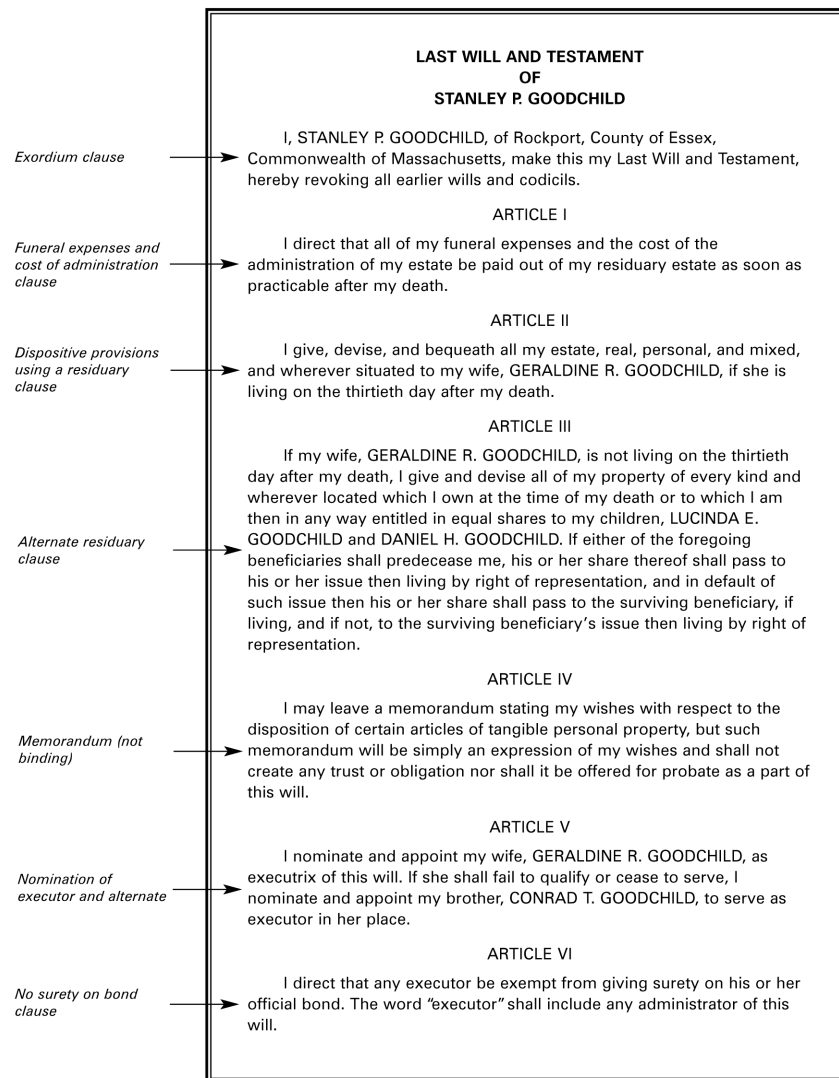


FIGURE 6-1 Sample Will with Clauses Defined

Administration of WILLS, TRUSTS *and* ESTATES

FIFTH EDITION

Gordon Brown
Scott Myers

*Appointment of
guardian and alternate
no surety on bond
clause*

ARTICLE VII

I appoint my wife, GERALDINE R. GOODCHILD, as guardian of the person and property of my minor children. If for any reason she shall fail to qualify or cease to serve, I appoint my sister, MAUREEN N. LANDERS, to serve as guardian in her place. No guardian appointed in this will or any codicil need furnish any surety on any official bond.

ARTICLE VIII

My executor shall have full power of management and authority to sell, either at public or private sale, or to exchange, lease, pledge, or mortgage, in such manner and on such terms as such executor deems advisable, any or all property, real or personal, in my estate and to execute all deeds, assignments, mortgages, leases, or other instruments necessary or proper for these purposes; to compromise claims in favor of or against my estate on such terms as such executor deems advisable; to retain any securities or other property owned by me at the time of my death, although the same may not be considered a proper investment; to make distribution of property in kind, and for such purposes to determine the value of such property; and generally to do any and all such acts and things and execute any and all such written instruments with respect to such property as if the absolute owner thereof.

Powers of executor

*Testimonium clause
with self-proof affidavit*

I, the undersigned testator, do hereby declare that I sign and execute this instrument as my last will, that I sign it willingly in the presence of each of said witnesses, and that I execute it as my free and voluntary act for the purposes herein expressed, this 2nd day of January, 2002.

Stanley P. Goodchild

*Attestation clause with
self-proof affidavit*

We, the undersigned witnesses, each do hereby declare in the presence of the aforesaid testator that the testator signed and executed this instrument as his last will in the presence of each of us, that he signed it willingly, that each of us hereby signs this will as witness in the presence of the testator, and that to the best of our knowledge the testator is eighteen (18) years of age or over, of sound mind, and under no constraint or undue influence.

(Witness)

(Address)

(Witness)

(Address)

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF ESSEX

*Self-proof affidavits
sworn to before notary
public*

Subscribed, sworn to, and acknowledged before me by the said testator and witnesses this 2nd day of January, 2002.

Notary Public
My commission expires:

FIGURE 6-1 (continued)