

Drafting Guidelines to create a will.

Introductory Paragraphs

Exordium clause: Opening paragraph of will

Identify testator.

State domicile

Declare last will and testament.

Revoke all prior wills.

Main Body: 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.

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.

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.

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

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.

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:

A clause connecting the operative provisions of a written contract or deed with its execution or attestation clause, and which expressly confirms: The parties' intention to enter into the document by signing it. The date the document takes effect.

Attestation Clause:

An attestation clause is **a provision at the end of an instrument, especially a will, that is signed by witnesses and recites the formalities required to make the instrument effective.** A formal attestation clause itself can serve as prima facie evidence of the facts within the instrument.

A Virginia self-proving affidavit:

Is a legal instrument that may be attached to a last will and testament to make it self-proving and shorten probate. A self-proving will is a will that has been certified and acknowledged in advance of probate. A Virginia self-proving affidavit form is a legal instrument that may be attached to a last will and testament to make it self-proving and shorten probate. A self-proving will is a will that has been certified and acknowledged in advance of probate