The Basic Wills Handbook

A Guide to the Wisconsin Basic Wills

2nd ed., 1995

By Howard S. Erlanger

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NOTE TO READERS

This booklet serves two primary purposes. First, by explaining the "pros and cons" of the Wisconsin Basic Will, it helps those who are uncertain about using a Basic Will to decide about its usefulness. Second, the booklet helps to guide those who have chosen to use a Basic Will. Step-by-step instructions, specific precautions, and definitions of key terms are included.

If you are "undecided," you should give special attention to pages 6 through 14, which deal with estate planning principles and the Basic Will's limitations. If you decide to use the Basic Will, then be sure to read the instructions for filling out the will beginning on page 15.

If you already have decided to use the Basic Will, please give the entire booklet a thorough reading. There is more to completing the Basic Will than simply following the instructions and filling in the blanks.

Legal terminology may present difficulties for some readers, but is hard to avoid using at least some technical terms. Since many legal terms appear in the Basic Will itself, it is important to understand them. To assist you, all words and phrases appearing in **bold print** in this handbook are defined in the Glossary. There are also cross-references that direct you to another page or section for further information.

The word "**testator**" appears throughout this handbook and in the Basic Wills. This term technically refers to a male person who makes a will. The female equivalent is "**testatrix**." The Basic Wills use "testator" to refer to both male and female persons. In this booklet, use of "testator" and any related male pronouns, such as "his," is a matter of editorial convenience.

Finally, a copy of the Basic Will and Basic Will with Trust (as amended in 1994) is enclosed for your convenience. Use it only after you understand its implications. The time you take now to become informed will pay off later in peace of mind and in a reduction of work for your family.

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I. INTRODUCTION

On April 25, 1984, the Wisconsin Legislature enacted a statute creating the Wisconsin "Basic Will" and "Basic Will With Trust." These forms, intended as official "do-it-yourself, fill-in-the blanks" wills, provide a relatively simple and inexpensive means for people to dispose of some types of property after death.

The Legislature, concerned that many parents with minor children have no wills and that many older people have wills that are not current, enacted the Basic Will law to give those with modest estates a convenient method of providing for their survivors. The Basic Wills were designed primarily to meet the needs of married couples with or without children. The Wills also may work satisfactorily for some unmarried parents and for other people who simply want to leave specific gifts for individuals or charities. The Basic Wills are *not* useful for people with substantial business interests, for people with large amounts of property, or for married couples with children from a previous marriage.

People have many reasons for not making wills. Some have difficulty facing the fact that they will die. They are uncomfortable thinking about death and believe that they "still have time." Others have difficulty making hard choices. Issues like "Who'll get my silver service?" make them uncomfortable. Some hesitate to go to attorneys, fearing that attorneys will mislead them or charge too much. For these people, and others, the Basic Wills are a relatively painless method of providing for survivors.

Although the Basic Wills can adequately serve the needs of many Wisconsinites, serious problems could arise for people who do not understand the implications of the language in the forms. In addition, the Wills are relatively inflexible and do not include various options that could more fully carry out people's wishes. Nevertheless, the Basic Wills can work well if people understand their limitations and are prepared to fill out the documents carefully.

II. ESTATE PLANNING PRINCIPLES AND BASIC WILL LIMITATIONS

To use a Basic Will effectively, you should know some fundamental estate planning principles and be aware of the Basic Wills' limitations. Some of the limitations are mentioned in the "NOTICE" section at the front of the Basic Wills, but they are not fully explained in the materials accompanying the wills. *Do not fill out a Basic Will before you know what its limitations are and why they might create problems.*

1. GET ORGANIZED

A **will** best accomplishes your goals when you have taken time to gather certain information about your property and to sort out your thoughts about who should receive it after your death.

a. **Identify and list all the assets in which you have an ownership interest.** Perhaps your house, car, savings accounts or stocks and bonds come to mind most easily. You should, however, think beyond the obvious. You should identify, for example, life insurance policies that you own or that are taken out on your life, Individual Retirement Accounts (IRAs), pension fund and government program benefits payable to your survivors (e.g., Social Security and Veterans benefits), and any death benefits your employer pays. In addition, you should identify any interest you have in a family farm or other family land, whether you have an interest in any trust property, and whether you might receive an inheritance from someone else in your lifetime.

b. **After identifying your assets, you should determine the type of ownership interest you have in them.** This means that you should identify the items you own alone and those you own with another person. If you are married, you need to consider how Wisconsin's Marital Property Act affects your property ownership (see Chapter IV). You also should try to determine the approximate value of your assets.

c. **Identify your potential survivors and decide how you want to provide for them.** Do you want, for example, all your property to go to your spouse? Do you want your property divided equally among your children if your spouse dies before you, or does one child need or deserve more of your property than the others? Do you want to provide for someone who is not your direct **descendant**? Do you want to give something to a charity?

Only after identifying those who should benefit from your **estate** *and* the extent and nature of your assets can you start to think about how a will can help to achieve your goals. A will controls the passing of *some* property to survivors, and it might not affect other property at all. Thus, personal circumstances determine whether a will plays a leading or supporting role in the actual distribution of estate property. The next section begins a discussion of some of these circumstances.

2. DISTINGUISH BETWEEN PROBATE AND NONPROBATE PROPERTY

The process of distinguishing between probate and nonprobate assets will help you see what property can actually pass under your will. The term **probate** technically refers to the court-supervised transfer of property after the owner's death. The probate court, however, only deals with certain assets called **probate property,** and a will generally affects only probate property. In many cases, most of a deceased person's (i.e., **decedent's**) property is **nonprobate property** which is *not* subject to the probate process or the terms of a will.

The most common form of *probate* property is an asset you own solely: examples include real estate, bank accounts, and personal effects. Another form of probate property is an asset you own with another, but without a right of survivorship: examples of this type of property are **marital property** and **tenancy-in-common** property.

Nonprobate property passes to survivors outside the probate process according to the terms of a contract or under Wisconsin law. Two important examples of nonprobate property that pass by operation of law are (1) property that two or more people hold in **joint tenancy** with right of survivorship, where the surviving co-owner(s) owns the property outright when one co-owner dies, and (2) **survivorship marital property,** where the surviving spouse owns the property outright when the first spouse dies. Other examples of nonprobate property include life insurance policies and retirement plans, which pass property under a contract's terms. Nonprobate property is sometimes said to be a means to "avoid probate", because it is generally passed outside the jurisdiction of the probate court and outside the terms of a will.

To determine the type of ownership interest you have in property, check the deed, the document of title, the face of a stock or bond certificate, or the bank account passbook for the key language. For joint tenants the deed language might say, "Susan Smith and Laurie Jones, as joint tenants." For co-owners of investment property the deed might say, Sam Smith and Fred Jackson, as tenants-in-common." (For married persons see Chapter IV.)

The process of distinguishing between your probate and nonprobate assets should help you see what you can actually pass on to a survivor through your will.

EXAMPLE. Joe died, leaving his wife, Irene, and two adult children as survivors. Joe had a will. His estate included the following items:

(1) House and Lot - In joint tenancy or survivorship marital property with Irene
(2) Checking Account - A joint account with Irene
(3) Life Insurance - Payable to Irene on Joe's death
(4) Northwoods Cabin - In joint tenancy with the children
(5) Stock Certificates - Joe as sole owner (Joe inherited the stocks).

The house and lot, the checking account and the life insurance proceeds are nonprobate and pass to Irene outside of the will. Similarly, the northwoods cabin passes to the children outside of the will. Only Joe's stock certificates are probate property and are affected by the terms of his will.

3. LAW OF INTESTATE SUCCESSION

Probate property is subject to the probate process whether or not the decedent leaves a will. If a person dies without a will, he or she is said to die **intestate**, and a decedent's probate property is distributed to various survivors on the basis of their relationships to the decedent.

Wisconsin's intestate succession law works like this: If there is only a surviving spouse, or there is a surviving spouse and all surviving children of the decedent are also children of the surviving spouse, then the surviving spouse receives all probate property. However, if a spouse survives along with at least one child of the decedent who is not related to the surviving spouse through birth or adoption, then the spouse's share of the probate property is significantly smaller. In this "second marriage" situation, the spouse would receive *none* of the decedent's interest in marital property, but would receive half of any other property in the decedent's net probate estate. If no spouse or children survive, the probate property passes to other direct descendants, parents, or more distant relatives. If no relatives survive, the probate estate passes to Wisconsin's school fund.

4. MARITAL PROPERTY LAW

On January 1, 1986, the "Wisconsin Marital Property Act" went into effect. The marital property law *fundamentally changes* the property rights of married people during marriage and at death. It creates an ownership system based on the assumption that each spouse makes an equal contribution to the marriage. Thus, any assets the couple acquires during the marriage are presumed to be marital property with each spouse owning a one-half interest in the property.

During marriage, any income from wages or investments, and any assets purchased with these funds, are marital property. Ordinarily, marital property is subject to the probate process and to the terms of a will. The spouses, however, can own property as "survivorship marital property," whereby the property passes outside the will, similar to joint tenancy.

Under the marital property system, title to property is less important than the circumstances under which property was acquired. For example, if a husband purchases a government savings bond with wages he earns while married and places the bond in his own name, his wife nevertheless owns a one-half interest in the bond. Similarly, if the wife opens a bank account with her earnings, the husband would own one half, regardless of the account registration.

By using a properly drafted written agreement, however, spouses can change the law's effect. For example, a couple can designate property that would otherwise be marital property as "individual" property instead. Even without an agreement, gifts and inheritances to a spouse, as well as property acquired before marriage, will not be marital property as long as their origins can be accurately traced.

The Marital Property Act has an impact on married people who use a Basic Will (or

any other estate planning technique). Although the law does not change the result for wills that pass the entire probate estate to a surviving spouse, it does affect wills that pass property to any other survivor, because a testator only has power to transfer his or her one-half interest in any marital property.

EXAMPLE. Assume that a husband purchases a marital property asset (e.g., stock) and registers it only in his name. If the husband's will leaves the stock to a nephew, the nephew will not own all the stock. Instead, he inherits the husband's one-half interest, and the surviving wife owns the other one-half interest because that half never was the husband's to give away. If the stock is worth $1000, it can be sold, and the nephew and surviving wife each would receive $500, or the certificate may be reissued so that the nephew and surviving wife will each receive one-half the shares. The fact that only the husband's name appears on the stock is irrelevant.

The husband and wife can agree to reclassify marital property as owned solely by one spouse as his or her individual property, but otherwise the spouses own it equally. It is usually best to try to avoid a situation where a surviving spouse and another person together own an asset that was marital property, because of the confusion or dissension that can result.

If you have questions about your rights in a "second marriage" situation, about how to write a valid marital property agreement, or about any other aspect of the Marital Property Act, you should contact an attorney.

5. GUARDIANS FOR MINOR CHILDREN

One reason for having a will, regardless of whether you have probate property, is that a will enables you to nominate someone to serve as guardian for your minor children. This provision becomes significant when both parents die or when a surviving parent is unable to care for the children due to a legally-recognized incapacity.

Two forms of guardianship exist: **guardian of the person,** and **guardian of the property.** The guardian of the person normally provides a "new home" for the child, while the guardian of the property manages the child's inherited property and other assets. The two guardians need not be the same person, although they often are.

The Basic Will provides for naming *one* person who will serve as *both* guardian of the person and guardian of the property. It also provides for naming one person as a **successor guardian.** If you want different people to serve in the two guardian capacities, if you want joint guardians (e.g., a married couple), or if you want to nominate additional successors, you should direct this in a **codicil** to the Basic Will (see Chapter VI).

People with young children should consider using the Basic Will with Trust. With this option, property can be placed in the **trust** with **a trustee** to manage its use. With a trustee handling your descendant's financial affairs, there no longer is a need to appoint a "guardian of the property." The trustee may be the same person as the "guardian of the person," but need not be so. (See Chapter III.)

6. CHILDREN FROM A PREVIOUS MARRIAGE

The Basic Wills are generally designed for "intact" families. The language assumes that the surviving spouse is also the parent (by birth or adoption) of any surviving children. *Thus, the Basic Wills are not well-suited for those who have a child or children from a previous marriage or born out of wedlock.*

If you are survived by children and a spouse who is not their biological or adoptive parent, you must plan carefully. If your will leaves everything to your spouse, that property becomes part of your spouse's estate when he or she dies. Your spouse's will or the intestacy laws will direct the distribution of his or her probate property. Your spouse has no legal obligation to provide for stepchildren, and the intestacy laws do not pass property to stepchildren. Thus, unless specific gifts are made in your Basic Will to your children from a previous marriage, the children may never share in your probate property.

Where children from an earlier marriage are involved, talk with an attorney before using a Basic Will.

7. BUSINESS PROPERTY

When a person owns a business as a sole proprietor or as a partner, generally his or her interest in the business is probate property. It may be the owner's most significant probate asset or the most significant marital property asset of a married couple. As probate property, the business interest is subject to the terms of a will.

With proper planning, arrangements can be made to continue the business under professional management or to allow a partner to "buy out" the descendant's share and/or the surviving spouse's share in the partnership. Business people should avoid passing on an interest in a business to survivors who have neither the expertise nor desire to handle it, or who may have difficulty working with a partner. Rivalries or differences in opinion could undermine the business to everyone's detriment.

The Basic Wills cannot help business people avoid such problems. If you own a significant business interest, it is important to have a will, and you should contact a lawyer before using a Basic Will or formalizing any other estate planning documents.

8. FEDERAL TAX CONSIDERATIONS

The federal government may tax property passing at death. The federal tax is called the **estate tax**. Wisconsin does not directly tax estates or inheritances.

The federal estate tax is based on the value of the assets in a decedent's **taxable estate**, which includes both probate and nonprobate property. Taxes generally are based on the value of property passing from the decedent, not on the method (i.e., probate or nonprobate) used to pass it. *Thus, property owned or controlled at death may be taxable whether or not it passes under the terms of a will.*

The federal tax system has credits, deductions, and exemptions that permit significant amounts of property to escape tax, including an exemption for property that passes directly to a spouse. Using sophisticated planning techniques, estate planners can help you save thousands of dollars if your taxable estate is substantial. Although the Basic Will and Basic Will with Trust can work well with respect to taxes for some estates, the consequences for others could be disastrous. *If it is possible that the total value of all property interests owned by you and your spouse might exceed $600,000 before both of you have died, then you should consult an attorney for tax advice.*

Note: $600,000 is the "exemption equivalent" in 1995. In recent years there have been proposals to raise this amount, and also proposals to lower it. If you are concerned about the estate tax, you should find out the current exemption equivalent amount.

III. PLACING PROPERTY IN TRUST

The Basic Will with Trust provides a trust option.

1. WHAT IS A TRUST?

A **trust** is an arrangement by which one person transfers property to another person, to be managed for the benefit of a third person (or persons). The person creating a trust is generally called a "grantor." Virtually any type of property, including real estate, life insurance benefits, stocks and cash can be used to fund a trust. The trust property is termed the **principal** or **corpus.** The person or organization entrusted with administering the trust is called a **trustee.** The trustee represents the grantor's interests. The individuals who receive benefits from the trust are called **beneficiaries.** The trust's language sets terms by which the trustee can distribute the trust's income and/or principal to the beneficiaries.

Under the Basic Will with Trust, the trust corpus consists of the probate assets remaining after distribution of personal effects and specific gifts to people or charities, and after payment of the decedent's debts and expenses. Ordinarily, nonprobate property will not be used to fund the trust in the Basic Will with Trust. To coordinate the disposition of probate and nonprobate property, however, one can name the trust as the beneficiary of a nonprobate asset (e.g., life insurance proceeds) (see p. 24).

2. WHY USE A TRUST?

One advantage of using a trust is that a trust gives the trustee considerable flexibility in administering property. For example, the trust in the Basic Will with Trust enables a trustee to distribute to the beneficiaries "as much, or all" of the trust's principal or income, or both, as necessary. The trustee's powers are limited by the requirement that distributions of trust property "shall" be made "from time to time" for the beneficiaries' "health, support, maintenance and education." A trustee can sell or invest trust property, and if it is in a beneficiary's best interest, a trustee can distribute all the trust property at one time and simply close out, or terminate, the trust in the Basic Will with Trust.

3. WHO SHOULD USE A TRUST?

People often use trusts when they plan to leave substantial property to young children because the trust enables a trustee to handle the children's financial affairs. Others use trusts when their children are not ready or willing, upon turning eighteen, to handle their own finances. A parent can designate the age at which a child owns property outright by tying the trust's termination date to, for example, a child's twenty-first or thirtieth birthday.

The Basic Will with Trust is designed especially to meet the needs of families with minor children. Under its terms, the income and principal can be used for the children's

basic support needs or to finance their education. The trustee can distribute more money to a beneficiary with greater needs than to one who has fewer needs. When the trust terminates, the remaining principal and any accumulated income is distributed to the children (or if a child has predeceased, to that child's children, if any). This trust can be very useful, for example, when both parents die simultaneously, such as in an automobile accident. Unless a different age is specified, the trust in the Basic Will with Trust terminates when the youngest child becomes twenty-one.

4. WHO SHOULD BE THE TRUSTEE?

You can name almost anyone to serve as trustee, including relatives, friends, or professional trust managers. If you plan to name a friend or relative as trustee, you should weigh such matters as ability to manage financial affairs, ability to act fairly in distributing trust property to individual beneficiaries, and the degree to which the beneficiaries will respect and abide by the trustee's decisions. You should name a trustee who is likely to survive you and who will "stick with" the trust until it terminates. Make sure that you talk with potential trustees about their willingness to serve, about your objectives and about any special concerns for the trust's management.

If your estate is fairly large, you might consider naming a professional trust manager from a financial institution as trustee. Professional trustees offer investment experience and accounting and tax advisory services. In addition, they can act as an impartial, third party which is helpful if beneficiaries are likely to pressure a trustee who is not independent. However, the fact that the trustee will not know you or your family members very well could be a hindrance.

Professional trustees charge fees. Generally, trusts that are funded with less than $250,000 are not suited for professional trust management since the fees would erode too much of the income from the trust.

With smaller trusts, a relative or friend as trustee may be your best alternative. Someone who is close to you may be willing to serve as trustee free of charge, thus saving trust assets for your beneficiaries. You should talk with potential trustees about compensation prior to naming them. A relative or friend may be able to hire a certified financial planner to give investment advice at an affordable price.

5. WHAT IF A CHILD HAS SPECIAL NEEDS?

If you have a child with a disability, the Basic Will with Trust may not be well-suited for you because it allows trust property to be used for the "basic support" needs of the beneficiaries. This jeopardizes government benefits that a child with a disability otherwise may be entitled to, such as Supplemental Security Income (SSI). A special trust, generally referred to as a "supplementary trust," can avoid these problems. *If you have a child with special needs, contact an attorney before using a Basic Will or Basic Will with Trust.*

6. OTHER USES OF TRUSTS.

Trusts can be created during life or at death for a variety of purposes, including the avoidance of probate or the reduction of death or income taxes. The Basic Will with Trust is not designed to fulfill these purposes. If you have questions about how trusts might fit into your tax or estate planning, you should consult an attorney or tax advisor.

IV. GENERAL INSTRUCTIONS FOR COMPLETING THE WISCONSIN BASIC WILL FORMS

The Basic Wills are generally easy to use because a testator only has to "fill-in-the-blanks" for the will to take effect. Of course, the blanks must be completed correctly for a Basic Will to operate as intended. Since a will affects the post-death transfer of valuable assets, one should take the time to be very careful. Here are some tips for filling out and safe keeping a Wisconsin Basic Will.

1. READ THE WILL CAREFULLY

Begin by reading the section entitled "NOTICE TO THE PERSON WHO SIGNS THIS WILL." It lists several warnings to which you should pay close attention. Note that you cannot "change, delete or add words to the face" of the will. To do so may invalidate all or part of the will.

Next, you should read all the sections of the will or have someone read them to you. Several sections contain specific instructions for signing your name as a condition for putting your wishes into effect. Other instructions are designed to reduce confusion and to minimize opportunities for fraud. If words or concepts in the Basic Will are unfamiliar, find out what they mean! Use the Glossary that begins on p. 30, the "Definitions" section in the Basic Will, or contact an attorney.

You should be especially careful when completing the Basic Will's witnessing section. Follow the instructions on pp. 22 - 23 precisely to ensure the will's validity.

2. WRITE CLEARLY AND LEGIBLY

To give effect to your Basic Will, the probate court must be able to read your writing. Use care in selecting a pen. Use a permanent pen with dark ink and avoid marker type pens with water-based ink that "bleeds" into the paper. *Never* use a pencil.

Be aware that you should *print* (or type) certain information when the will calls for it. Where, however, the will calls for a signature, write it out as you normally do.

3. BE SPECIFIC

A will that unambiguously sets forth a testator's wishes can help avoid delays, confusion and arguments for those involved in settling the estate. When naming those who will benefit under your will, you may want to print out their *full* names, especially if two or more beneficiaries have similar names. You also might want to identify the person's relationship to

you. For example, if your son and a nephew share the same name, you should add after the name, "my son," or "my nephew." Sometimes it is helpful to include the person's address and the city or town where he lives, in order to make it easier to notify the beneficiaries. If you run out of space on the Basic Will form, include additional information in a codicil (see pp. 27 - 28).

When leaving gifts to charity, be sure to use the charity's full legal name. For example, a person living in the Madison area who wants to leave a gift for the local United Way fund should print, "United Way of Dane County." Simply printing "United Way" will lead to confusion because there are many United Way agencies. Call or write the organization to get its correct legal name.

When leaving specific gifts of property, your description of the property should leave no doubt about its identity. For example, if a testatrix who has been married twice wants to leave a wedding ring to her granddaughter, the will should identify the gift as, for example, "The wedding band from my first marriage, yellow gold with two brilliant cut diamonds."

4. SAFEKEEPING THE WILL

Your will should be in a secure place that is accessible to your personal representative (i.e., the person administering your probate estate) or to another responsible person. Those you nominate for personal representative should know precisely where your will is located and how to get to it. Wisconsin law provides that wills can be deposited with the Register in Probate in your county. For a fee, the Register in Probate keeps the will on file. After your death, the probate court opens the file and notifies the personal representative that it is holding the will. This filing procedure is secure, inexpensive, and fairly convenient. Alternatively, a safe deposit box at a bank or other financial institution may be a good place to keep a will. To avoid delays, however, make certain that your potential survivors know where the key is. A strongbox that you keep at home also can adequately store your will. It should have a secure lock to prevent tampering, and it should be fireproof and waterproof. Use of a safe deposit box or a strongbox also enables you to keep important documents such as deeds and life insurance policies together with your will.

Finally, it may not be a good idea to give the original of your signed will to an attorney for safekeeping. In cases where an attorney holds the will, survivors often feel pressured to have that attorney probate the estate, even if they would rather go to someone else. In addition, attorneys who suggest that clients leave their wills for safekeeping could face disciplinary actions for violating professional ethical considerations. However, if you consult a lawyer, he or she will want to keep a copy of your will on file.

5. WHAT ABOUT PRIOR WILLS?

Generally, if you make a new will it serves to revoke your old one and any codicils to it. Nonetheless, to avoid confusion you should destroy your old will and any copies by tearing them up or burning them. If you wish to keep a copy of an old will, you should clearly mark it as having been revoked.

V. STEP-BY-STEP INSTRUCTIONS FOR COMPLETING THE WISCONSIN BASIC WILL AND BASIC WILL WITH TRUST

I. THE BASIC WILL

The Wisconsin Basic Will materials can be divided into three parts: 1) an introductory sheet that contains official definitions for some terms used in the will, as well as the full text of certain sections that are abbreviated in the will; 2) a NOTICE section that contains cautions about the Basic Will's limitations; and 3) the text of the Basic Will. The following discussion provides a section-by-section guide to the Basic Will.

A. NOTICE Section. Read the eleven points in the notice section. If you decide to use the Basic Will, sign your name on the line at the bottom of the page. This signifies that you are aware of the Basic Will's limitations, although failure to sign here does not automatically invalidate the will.

B. Print or type your name on the dotted line under the words "WISCONSIN BASIC WILL OF." Printing your name boldly and legibly identifies the will as yours.

C. "Article 1. DECLARATION." By making this will, you revoke any earlier wills and additions to them. This becomes your *last* will and testament, until you make another one and revoke this one.

D. Article 2.1 PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS. This provision operates to transfer personal items of probate property to your spouse if he or she survives you, or to your children to be divided equally among them, if your spouse does not survive you. Included, for example, are your jewelry, clothing, family heirlooms, boat, trailer, hunting equipment, bicycle, other recreational items, and many other items that come within the broad language "Personal, Recreational and Household Items." To leave any of these items to someone other than your spouse or children, or to leave an item for a specific child, you can use the boxes under Article 2.2 for making specific gifts (see Section E below), or you can include additional instructions in a codicil (see pp. 27 - 28).

If your spouse does not survive you, the will leaves your personal items to your surviving *children.* Should any child die before you, survived by his or her own children (your grandchildren), none of these personal items will go to the grandchildren.

E. Article 2.2 GIFTS TO PERSONS OR CHARITIES. This section enables you to leave specific gifts from your probate property to individuals and charities. If you intend to make a cash gift, remember that it must come from your probate estate (see p. 7). If your probate estate has no cash on hand, other probate property items will be sold to raise money to fund the cash **bequest.** If you name a tangible item that is not in your probate estate when you die, generally that gift will be void.

When making a gift in Article 2.2, follow the instructions exactly, or your gift may be nullified. *Print* exactly the full name of the first person or organization that is to receive a gift in the first box in the first line of boxes. Gifts to other beneficiaries should be listed in the second through fifth lines, according to the importance you place on them.

Article 2.2 states that you can name only one individual or organization in each of the five specific bequest spaces. Thus, if you want to leave a gift in joint ownership (e.g., to your son and daughter-in-law together), you must state this in a codicil. Similarly, if you want to leave more than five gifts, the additional gifts must be provided for in a codicil (see pp. 27 - 28).

Describe each specific item, or indicate the amount you are leaving, in the middle box in each line. Be specific! (See pp. 15 - 16.) If your gift is a cash amount, Article 2.2 directs you to write out the amount in words, as well as to show it in figures. For example, you should print "two hundred dollars" along with the numerical figure, $200.00. This protects against someone adding additional digits to the numerical figure to increase the size of the gift.

Note that Article 2.2 does not allow you to leave a fractional portion of your probate property as a specific gift. For example, if you are not sure of the probate estate's value, you might prefer to give a percent (e.g., 25%) or a fraction (e.g., one-fourth) of the estate, rather than a dollar amount. If you want to leave a fractional or percentage portion of your property, you must specify this in a codicil.

Finally, in the right hand box, be sure to sign your name on the dotted line under the words "SIGNATURE OF TESTATOR." If you forget to sign, the gifts will not be effective, and the property will become part of your "Residuary Estate." In any unused lines, write "Not Used" to prevent fraud.

F. Article 2.3 ALL OTHER PROBATE ASSETS (MY "RESIDUARY ESTATE"). Before you select between the two property disposition clauses in this section, you must understand the consequences of each. Both property disposition clauses "dispose" of the assets remaining in your probate estate after your personal effects and specific gifts are distributed (i.e., the "**residuary estate**"). The residuary estate only includes the remainder of your *probate property*. It does *not* contain nonprobate assets such as life insurance benefits payable to another person or property you own in joint tenancy. Depending on (1) the extent to which your assets pass as nonprobate property and (2) the size of the specific bequests in your will, your residuary probate estate could be a large, or quite small, part of the assets you transfer at death.

"Property Disposition Clause (a)" provides that all the remaining probate assets will pass to your spouse if he or she survives you. If your spouse does not survive you, then all your remaining assets pass to your children and to the descendants of any deceased child or children through **right of representation.** Under the Basic Will, "right of representation" means "that the **issue** of a deceased person inherit the share of an estate that their immediate ancestor would have inherited, if living." The term "issue" includes children, grandchildren, great-grandchildren, and more remote lineal descendants.

EXAMPLE. Mary is a fifty year old widow who had two children, David and Susan, and two grandchildren through Susan. Mary has never remarried, and her will contains a property disposition clause leaving her residuary estate to David and Susan with "right of representation." Recently, Susan died in an accident, leaving her children (Mary's grandchildren) as survivors. Under these circumstances, when Mary dies, son David and the two grandchildren will share Mary's residuary estate. Half the estate will pass to David. Susan's half will pass to the grandchildren in equal shares. The grandchildren are said to "represent" Susan's interest in Mary's estate.

The full text of "Property Disposition Clause (a)" is located on the introductory sheet accompanying the Basic Will, under "853.58(a) RESIDUARY ESTATE; BASIC WILL."

"Property Disposition Clause (b)" provides that a residuary estate will be "distributed as if I (the testator) did not have a will." This means that the distribution takes place according to the laws of intestate succession (see p. 8). If you are married and your spouse is the parent of all your children, then your spouse will receive the entire residue of your estate. However, if you are in a "second marriage" situation, your children from outside the marriage will receive at least half of the residue. Thus, if you are in a second marriage and wish your spouse to receive the residue of your probate estate, you should *not* use "Property Disposition Clause (b)."

The full text of "clause (b)" is located on the introductory sheet accompanying the Basic Will, under 853.58(b). The text refers to the "law of the State of Wisconsin in effect on the date of my death." This means the intestate succession law, found in chapter 852 of the Wisconsin Statutes, including any amendments that take effect up to the day you die.

Note that the effects of clauses (a) and (b) are the same when your spouse does not survive you. In either case, your residuary estate passes to your children, with descendants of deceased children taking a share by right of representation.

To make one of the property disposition clauses effective, *sign your name on the line next to the clause you choose.* You must "SIGN ON ONE LINE ONLY." Print the words "Not Used" on the line next to the clause you reject. If you sign one and leave the other blank, someone could forge your name on the blank line. If your signature appears on both lines, then your residuary estate passes under clause (b), the same as having no will at all. This also happens if you fail to sign on either line.

G. Article 3.1 PERSONAL REPRESENTATIVE. The Basic Will enables you to nominate an individual or institution, and up to two successors, to serve as **personal representative** for your estate. The personal representative administers your probate estate by ensuring that your debts are paid and that the remaining property passes to your beneficiaries according to your will's directions. In many states this person is called an **executor** or executrix.

Note that Article 3.1 permits you to name only *individual* persons or institutions as personal representatives. If you want to name *co*-personal representatives to share this responsibility, you must direct this in a codicil (see pp. 27 - 28).

Many people nominate their spouse as the personal representative, which generally works satisfactorily. Sometimes, a spouse may not want to serve alone, or the testator may want two other people to serve together. In such cases, people often want to name other family members as co-personal representatives. While this may work out well, estate planners often advise against it because the shared responsibilities sometimes lead to in-fighting.

In nominating a personal representative, you should choose an individual who is comfortable dealing with financial affairs and who has integrity. The nominees may be family members, friends, or independent third parties (such as financial institutions) which charge for the service. Note that the personal representative and guardian for your children need not be the same person.

Under Wisconsin law, personal representatives have certain basic powers for handling an estate's financial affairs. The Basic Will expands these powers, giving broad authority to the personal representative to borrow money, sell property, and to invest estate assets. These powers are to be used "in the best interest of the estate, with no limitations." Thus, the personal representative is to manage the estate in order to provide for the estate's beneficiaries in the best possible way, without acting carelessly.

Wisconsin law provides that a personal representative can receive a 2% commission. The commission is computed on the value of the net probate estate, after certain debts are subtracted. A personal representative can decline the commission. You should discuss the compensation issue with your nominees.

Under Article 3.1, *print* the name of at least one personal representative in the boxes provided. It is advisable to also nominate successors. The probate court will generally follow in order among the nominees when appointing the personal representative.

H. Article 3.2 GUARDIAN. If you have minor children and your spouse survives you, he or she normally continues to serve as guardian — both guardian of the person and guardian of the estate — for the children. Guardians named in a will become important when the parents die simultaneously or when a surviving spouse with minor children later dies. *If you are divorced, have custody of your children, and do not want their other parent to be guardian when you die, you should see an attorney before nominating a guardian.*

In nominating guardians for your minor children, you should consider who can provide a loving home for them and whose approach to child-rearing is one with which you are

comfortable. If your children are older, you should consult with them about the choice. This approach generally promotes a smooth transition. If a child is fourteen or older, he or she will be able to participate in the choice of guardian if you die.

Article 3.2 provides that the one person named should "serve as guardian of the person and estate of that child." You can separate the guardian of the person and guardian of the child's estate functions between different individuals (see p. 9). This is advisable when the person who can provide a loving home does not have the skill, experience, or time to handle investments or other financial affairs. If you want to name separate guardians for the person and estate, or if you want joint guardians (i.e., two people to serve together as guardian of the person or property, or both), you must direct this in a codicil (see pp. 27 - 28).

Print the names of your nominee for guardian and nominee for successor in the boxes provided, *after* you talk with the nominees about their willingness to take on these responsibilities. If you want to nominate additional successor guardians, do so in a codicil.

Keep in mind that a guardian of the child's property, by law, is subject to the probate court's direction and guidance. The court may limit the guardian's discretion to administer your child's inheritance. To some extent, these limitations can be avoided with a trust. Although the trustee under a Basic Will trust is supervised by the court, the trust allows greater flexibility in handling estate assets (see Chapter III).

I. Article 3.3 BOND. This section enables you to ask the probate court to require a **bond** for the person, or persons, who serve as personal representative and guardian. Bonding is a form of insurance. A bonding company insures the estate against any losses that result from the mistakes or malfeasance of the personal representative, guardian, or trustee. The amount is left to the court's discretion, but the estate pays the fee. Bonding is appropriate when a person's integrity or astuteness are in doubt. Under normal circumstances, however, bonding is an unnecessary expense because if you have doubts about the integrity of a person, you should not nominate him or her for these positions. Many people provide in their wills for "waiving" (i.e., not requiring) the bond. Courts normally follow this directive, although they are not required to.

The Basic Will's instructions for bonding are confusing because they contain a "double negative." If you *do not* want your estate to pay a bond for the personal representative or guardian, then *do not* sign your name in the box at Article 3.3. If you *do* want bond for *both* of them, then you should sign your name in the box. If you want bond for only one or the other, you must state this in a codicil (see pp. 27- 28), because Article 3.3 does not allow you to differentiate between bond for the personal representative and guardian.

J. Signing the Basic Will and the STATEMENT OF WITNESSES. After you have filled in your choices and directives as described above, you *must* follow carefully the signing and witnessing procedures listed below in order for your will to become effective. The

signing must be witnessed by two people who will not receive property under the will's terms and who otherwise are without a financial interest in the distribution of property under the will. For example, it would be improper for person "A" to witness the signing of her sister's will, if A's spouse is a beneficiary under the will, *even if* A herself is not a direct beneficiary. In addition, you and the witnesses must all be present to watch each other sign. These procedures are designed to prevent fraud.

- When you and the two witnesses are gathered in the same room, begin the signing ceremony by acknowledging that you intend the Basic Will that you have filled out to be your latest will and testament. It is *not* necessary for you to read the will to them.
- In the three blank spaces in the line that starts, "I sign my name to the Wisconsin Basic Will. . . ," insert the *date* on which you sign the will, and the name of the city, village or town, and the state in which you are signing. Dating the will helps the probate court determine whether the will is, in fact, your last will and testament. Your *last* will revokes all others, even if you do not destroy them. (See also p. 17.)
- In the presence of the two witnesses, and as they watch, sign your name on the blank line, directly below the date, city and state, where the words "Signature of Testator" appear. Note that another line at the bottom of the page also calls for your signature. You will sign there a little later.
- Ask the two witnesses to read the statement of witnesses. If they can make the statement in good conscience, direct each of them to sign the Basic Will as you and the other witness both watch. The witnesses should also print their names and addresses (include zip code) in the spaces provided. The two witnesses should be adults, i.e., eighteen years old or older, and should receive nothing directly or indirectly under the will! (See above).
- Go back to each page of your will and sign your name on the lines at either the top or bottom of the page where the words "Signature of Testator" appear. While this formality is not required to validate your will, it indicates that each and every page appears just as you intend it.
- Finally, store your Basic Will in a safe place (see p. 16) and then start to enjoy the peace of mind that comes from knowing you have provided for those who will survive you.

2. BASIC WILL WITH TRUST

If you are undecided between using the Basic Will with Trust or using the plain Basic Will, refer to the chapter on trusts (beginning on p. 12). If you have specific questions about how a trust might work in your case, you should consult an attorney.

Most of the earlier instructions that apply to the Basic Will, beginning on page 18, also apply to the Basic Will with Trust. To avoid duplication, this section refers you back to those discussions that apply to the Basic Will with Trust, while adding other instructions that are

specific to the trust form.

The materials accompanying the Basic Will with Trust can be divided into three parts: 1) an introductory sheet with definitions and full texts for will language; 2) a NOTICE section; and 3) the text of the Basic Will with Trust. The following discussion provides a section-by-section guide to the Basic Will with Trust.

A. NOTICE section. See "A. NOTICE section" on p. 18.

B. Print or type your name on the dotted line under the words "WISCONSIN BASIC WILL WITH TRUST OF." Printing your name boldly and legibly helps to identify the will as yours.

C. Article 1. Declaration. See "C. Article 1. Declaration" on p. 18.

D. Article 2.1 PERSONAL RECREATIONAL AND HOUSEHOLD ITEMS. See "D. Article 2.1" on p. 18.

E. Article 2.2 GIFTS TO PERSONS OR CHARITIES. See "E. Article 2.2" on p. 19.

F. Article 2.3 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). Article 2.3 contains two property disposition clauses. Both clauses provide that your residuary estate, i.e., the probate property remaining after personal effects and specific gifts are distributed, will pass to your surviving spouse. *No trust is set up if your spouse survives you.*

If your spouse does *not* survive you, a trust is created using the residuary estate as the trust's **corpus.** The trust will not be funded by nonprobate assets such as life insurance or retirement fund benefits, unless you name the trust as a beneficiary of those nonprobate transfers. For example, in a life insurance contract, you could name your spouse as the policy's primary beneficiary, on the condition that he or she survive you, and name your trustee under the Wisconsin Basic Will with Trust (as trustee and *not* as an individual) as an alternate, or "contingent," beneficiary. If your spouse does not survive you, the insurance proceeds would become part of the trust corpus, to be used for the benefit of your children or other descendants. Most insurance companies and other organizations handling non-probate assets can help you to properly name the trustee and not the person or institution itself as beneficiary.

The trust designates your children, and the descendants of any children who do not survive, as beneficiaries. It gives your trustee the power to distribute trust principal and income to any or all of the beneficiaries, as the trustee sees fit. The trustee could distribute trust property to the children of a deceased child (your grandchildren) to the exclusion of your living children. To avoid this or a similar result, you should talk to your trustee about

your plans for the trust. If you want to legally bind your trustee to do something that is not specified in the trust, you must write specific instructions in a codicil (see pp. 27 - 28).

Under **Property Disposition Clause (a)**, the trust terminates when your youngest child reaches twenty-one years of age, or when all your children have died, whichever occurs first. Under **Property Disposition Clause (b)** you may designate the termination date so that the trust ends when your youngest child turns eighteen, or *any* age over eighteen. If you use clause (b) to choose an age other than twenty-one, you will probably want to choose a *higher* age, not a lower one. For example, if you expect any of your children to pursue an advanced education, you may want to extend the trust's termination date beyond age twenty-one. When the trust terminates, any remaining trust property is distributed to your surviving descendants by right of representation.

In order to make property disposition clause (a) or clause (b) effective, *you must sign your name on the line to the right of the clause selected.* Article 2.3 directs you to "SIGN ON ONE LINE ONLY." For example, if you choose clause (a), also *print the words "NOT USED'' on the line next to property disposition clause (b).* You must fill in the lines as directed.

If you want the trust to terminate when your youngest child turns eighteen, or any other age over eighteen (except twenty-one), print that number on the line that appears in the text of clause (b). Again, sign your name on the line, to the right of clause (b) and print the words "NOT USED" on the line next to property disposition clause (a). Your signature to the right of clause (b) emphasizes that you indeed have authorized the change in termination date from age twenty-one. REMEMBER, YOU MUST SIGN YOUR NAME NEXT TO THE CLAUSE THAT YOU SELECT, OR YOU WILL NOT HAVE A TRUST FOR YOUR CHILDREN, AND IF YOUR SPOUSE DOES NOT SURVIVE, YOUR PROPERTY WILL PASS UNDER INTESTACY WITHOUT ANY TRUST.

The full texts of property disposition clauses (a) and (b) are found on the introductory sheet accompanying the Basic Will with Trust at 853.59(a), RESIDUARY ESTATE; BASIC WILL WITH TRUST.

G. Article 3.1 PERSONAL REPRESENTATIVE. See "G. Article 3.1," at p. 21.

H. Article 3.2 TRUSTEE. You can nominate one individual or institution and up to two successors to serve as trustee for the trust you select. *Remember that you cannot name your spouse as trustee, because there will be a trust only if your spouse predeceases you. Print* the names of your primary trustee and any successors in the boxes provided. Note that Article 3.2 provides for only one name. If you want two or more persons as co-trustees, you must state this in a codicil (see pp. 27 - 28). You should also weigh the advantages and disadvantages connected with naming the same person as both trustee and guardian. The same person need not serve in both capacities (see p. 9).

I. Article 3.3 GUARDIAN. See "H. Article 3.2," on p. 21.

J. Article 3.4 BOND. See "I. Article 3.3," on p. 22. Note that the probate court can be asked to require bond for the trustee, personal representative and guardian under the language of Article 3.4. If you do not want any of them to furnish a bond, DO NOT sign in the box at Article 3.4. If you want to require bond from some but not all of them, direct this in a codicil.

K. Signing the Basic Will with Trust and the STATEMENT OF WITNESSES. See "J.. Signing the Basic Will. . ." on pp. 22 - 23.

VI. CODICILS

1. AMENDING THE WILL

The law provides that "A Wisconsin Basic Will or a Basic Will with Trust . . . may be amended in the same manner as other wills." In Wisconsin, the approved method for amending a will is to use a codicil, that is, a supplementary document that becomes part of the will. Codicils can be used "to explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in a will." For the Basic Will, codicils are best suited for adding to the will. Codicils should not be used as a substitute for totally revoking an existing will, although they can be used to revoke specific will provisions.

Under no circumstances should you write in or cross out words in the Basic Will itself except where the will specifically instructs this. Do not write additions or clarifications between the lines or in the margins; put them in a codicil instead. To do otherwise causes confusion and may invalidate parts of the will.

The codicil's language should be typed, or, when using a pen, printed in dark ink. The testator and witnesses also should sign the codicil using pens with dark ink. Never use a pencil to write or sign a codicil.

You should specifically identify the will that the codicil amends. Refer to the will with language like, "this codicil amends the last will and testament of (testator's name) which was executed on (date) at (locality), (state)." Identifying the testator and the date the will was signed guards against fraud and minimizes confusion. Similarly, if you are replacing one codicil with another, the new one should state that it revokes the earlier version.

For the Basic Will and Basic Will with Trust, simple codicils can be used to accomplish a variety of goals. Since the Basic Wills provide space for only five specific bequests (at Article 2.2), you can use a codicil to make additional bequests. You should state your intention to make a gift, give the full name(s) of the person(s) or organization(s) receiving the gift(s), along with a description of the property or the exact amount of cash (see p. 19). Indicate, too, whether the gifts in the codicil are *in addition to* or *instead of* those listed in the will itself.

Codicils should also be used for leaving the property to more than one person in joint ownership. Language in each of the specific bequest boxes in Article 2.2 says, "Name only one (person or charity)." To put the names of more than one person in a box would contradict the will's language, calling into question your intent or ability to understand the will. Set forth your unique intentions in a codicil where any contradictions with the will's actual language can be clarified.

Codicils can also be used to name joint personal representatives or guardians, or to name additional successor representatives, guardians and trustees (the Basic Wills provide spaces for naming two successor personal representatives and trustee nominees, and one successor guardian nominee). For joint nominees, you should include directions in the event

VIII. GLOSSARY

Beneficiary. Person who receives property or benefits under the terms of a will, trust, life insurance policy, etc.

Bond. A form of insurance for people who serve in a fiduciary capacity, for example, as a personal representative, guardian, or trustee. The bond company agrees to cover any losses which might occur due to the fiduciary's mishandling of estate property. See page 22.

Codicil. A supplement or addition to a will. See Chapter VI.

Corpus. The "body;" the principal sum or capital (e.g., in a trust), as distinguished from interest or income.

Decedent. A person who has died.

Descendant. A person's descendants are his or her children, grandchildren, great-grandchildren, etc. Wisconsin law provides that unless a person explicitly states otherwise in a will or trust, then his or her descendants include adopted persons. Same as "issue."

Estate. The estate essentially consists of the decedent's property. "Probate estate" refers only to the property subject to the probate process; "taxable estate" refers to property subject to death taxes.

Estate Tax. A federal tax payable on death, based on the total value of a decedent's probate and nonprobate property, less certain deductions. As of 1995, unlimited amounts can be transferred to a spouse, and $600,000 can be transferred to people other than a spouse, without tax; however, these rules are subject to change.

Executor. Another name for a male personal representative who is named in the will.

Executrix. Another name for a female personal representative who is named in the will.

Fiduciary. A person who acts for the benefit of another in a relationship that implies great confidence and trust on the part of the person who created the relationship, and a high degree of integrity and responsibility on the part of the fiduciary. Personal representatives, guardians and trustees are "fiduciaries."

Guardian of the Estate. An individual or institution appointed by the court to supervise a person's property and finances.

Guardian of the Person. An individual appointed by the court to supervise the general well-being of a person not legally qualified to act for himself or herself (e.g., a minor child).

Heir. Person who receives property under the intestacy laws.

Intestate/Intestacy. To die without a valid will. Wisconsin's law of intestacy, or intestate succession, determines who receives the probate property of a decedent who dies intestate.

Issue. See "Descendant."

Joint Tenancy. A form of property ownership where ownership is held by two or more people, and where, upon the death of one owner, the property is owned entirely by the surviving owner(s). Joint-tenancy property passes outside the probate process. If a married

couple in Wisconsin perform the actions necessary to create a joint tenancy after January 1, 1986, they will actually create **survivorship marital property**.

Marital Property. Wisconsin's system of property ownership that has been in effect since January 1, 1986. Under a marital property system, both spouses equally share most property that either spouse acquires during the marriage (except for gifts and inheritances), regardless of how the property is registered or titled. All property in the name of either spouse is presumed to be marital property, unless there are documents and records to prove otherwise. See Chapter II, Section 4.

Nonprobate Property. Property that is not subject to probate and is generally not affected by the terms of a will. Nonprobate property includes joint tenancy property and property that passes to another under the terms of a contract (for example, life insurance or retirement benefits). See p. 7.

Personal Representative. Person or institution appointed by the probate court to administer the decedent's probate estate. The Personal Representative must ensure that all debts are paid and that property is properly distributed to beneficiaries or heirs. A personal representative named in a will is also called an executor or executrix.

Principal. See Corpus.

Probate. Court-supervised process during which the decedent's debts are paid, any estate taxes paid, and the remaining property owned by the decedent is transferred to beneficiaries according to the terms of a will, or to heirs under the intestacy laws.

Probate Estate. See Estate.

Probate Property. Property that is subject to the probate process. This generally includes property a person owns in his/her own name, and may include a person's interest in marital property, and in jointly owned property not held in survivorship form. See p. 7.

Residuary Estate. Property remaining in a testator's probate estate after debts and expenses are paid and specific bequests are distributed to survivors according to the terms of a will.

Right of Representation. Generally means that a descendant of a deceased person inherits the share of an estate that his or her immediate ancestor would have inherited, if that ancestor were living. See p. 20.

Successor Guardian/Personal Representative/Trustee. A person nominated in a will who serves as an alternate fiduciary when a primary nominee is unable to serve.

Survivorship Marital Property. A form of holding marital property that is similar in effect to joint tenancy. The title is in the name of both spouses, and upon the death of one spouse the property is owned entirely by the other. Although a spouse's interest in *marital property* passes through probate, *survivorship marital property* is a non-probate asset.

Taxable Estate. See Estate.

Tenancy-in-Common. A form of property ownership where ownership is held by two or more people, with no right of survivorship. The decedent's interest in this property is included in the probate estate.

Testamentary Trust. A trust established under the terms of a will, to take effect when the testator dies. The trusts in the Basic Will with Trust are testamentary trusts.

Testator. A man who makes a will.

Testatrix. A woman who makes a will.

Trust. A form of property ownership where the property's title is held by a trustee who has the duty to administer the trust for the benefit of people who are named as beneficiaries. During life, a trust is established by a written agreement between the trustee and the person who transfers property to the trust. At death a trust can be established in a will.

Trustee. An individual or institution that agrees to administer trust property for the benefit of the trust beneficiaries.

Will. A written document with legal effect that declares a person's desires concerning the disposition of his or her probate property after death.

The Center for Public Representation is a non-profit public interest law firm which provides advocacy, research, training and publications on behalf of a broad range of citizen groups. By speaking up on issues of specific concern to the elderly, consumers and children, CPR is working toward more effective citizen participation in government. CPR receives funding from local state and federal agencies, the University of Wisconsin Law School, training and publication fees, foundations and other private organizations, businesses and citizen contributions.

WISCONSIN BASIC WILL

WIS. STATUTES 853.55
THE FOLLOWING IS THE FORM OF THE WISCONSIN BASIC WILL

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS, AND IT DOES NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

2. THIS WILL IS NOT DESIGNED TO REDUCE TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

3. THIS WILL MAY NOT WORK WELL IF YOU HAVE CHILDREN BY A PREVIOUS MARRIAGE OR IF YOU HAVE BUSINESS PROPERTY, PARTICULARLY IF BUSINESS IS UNINCORPORATED.

4. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS WISCONSIN BASIC WILL. YOU MAY REVOKE THIS WISCONSIN BASIC WILL, AND YOU MAY CHANGE IT BY SIGNING A NEW WILL.

5. THE FULL TEXT OF THIS WISCONSIN BASIC WILL, THE DEFINITIONS, THE PROPERTY DISPOSITION CLAUSES AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF WISCONSIN (CHAPTERS 851 TO 882 OF THE WISCONSIN STATUTES).

6. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD READ AND CAREFULLY FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL. EACH WITNESS MUST SIGN HIS OR HER NAME WITH YOU AND THE OTHER WITNESS PRESENT.

7. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

8. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

9. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU HAVE CHILDREN UNDER 21 YEARS OF AGE, YOU MAY WISH TO USE THE WISCONSIN BASIC WILL WITH TRUST OR ANOTHER TYPE OF WILL.

11. IF THIS WISCONSIN BASIC WILL DOES NOT FIT YOUR NEEDS, YOU MAY WANT TO CONSULT WITH A LAWYER.

Signature of Testator . . . . . .

Signature of Testator . . . .

WISCONSIN BASIC WILL OF

. . . .

(Insert Your Name)

Article 1. Declaration.

This is my will and I revoke any prior wills and codicils (additions to prior wills).

Article 2. Disposition of My Property

2.1 PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS. Except as provided in paragraph 2.2, I give all my furniture, furnishings, household items, recreational equipment, personal automobiles and personal effects to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2 GIFTS TO PERSONS OR CHARITIES. I make the following gifts to the persons or charities in the cash amount stated in words (. . . . . . Dollars) and figures ($ . . . . . .) or of the property described. I SIGN IN EACH BOX USED. I WRITE THE WORDS "NOT USED" IN THE REMAINING BOXES. If I fail to sign opposite any gift, then no gift is made. If the person mentioned does not survive me or if the charity does not accept the gift, then no gift is made.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. . . . .

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. . . . .

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. . . . .

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. . . . .

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. . . . .

2.3 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph by writing my signature on the line next to the title of the Property Disposition Clause I wish to adopt. I SIGN ON ONLY ONE LINE. I WRITE THE WORDS "NOT USED" ON THE REMAINING LINE. If I sign on more than one line or if I fail to sign on any line, the property will go under Property Disposition Clause (b) and I realize that means the property will be distributed as if I did not make a will in accordance with Chapter 852 of the Wisconsin Statutes.

PROPERTY DISPOSITION CLAUSES *(Select one.)*

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION. .....

(b) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL. .....

Article 3. Nominations of Personal Represenative and Guardian

3.1 PERSONAL REPRESENTATIVE. *(Name at least one.)*
I nominate the person or institution named in the first box of this paragraph to serve as my personal representative. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes. I confer upon my personal representative the authority to do and perform any act which he or she determines is in the best interest of the estate, with no limitations. This provision shall be given the broadest possible construction. This authority includes, but is not limited to, the power to borrow money, pledge assets, vote stocks and participate in reorganizations, to sell or exchange real or personal property, and to invest funds and retain securities without any limitation by law for investments by fiduciaries.

FIRST PERSONAL REPRESENTATIVE

SECOND PERSONAL REPRESENTATIVE

THIRD PERSONAL REPRESENTATIVE

3.2 GUARDIAN. *(If you have a child under 18 years of age, you should name at least one guardian of the child.)*
If my spouse dies before I do or if for any other reason a guardian is needed for any child of mine, then I nominate the person named in the first box of this paragraph to serve as guardian of the person and estate of that child. If the person does not serve, then I nominate the person named in the second box of this paragraph to serve as guardian of that child.

FIRST GUARDIAN

SECOND GUARDIAN

Signature of Testator .....

3.3 BOND.

My signature in this box means I request that a bond, as set by law, be required for each individual personal representative or guardian named in this will. IF I DO NOT SIGN IN THIS BOX, I REQUEST THAT A BOND NOT BE REQUIRED FOR ANY OF THOSE PERSONS.

I sign my name to this Wisconsin Basic Will on ..... (date), at ..... (city), ... (state).

.....
Signature of Testator

STATEMENT OF WITNESSES *(You must use two adult witnesses.)*

EACH OF US DECLARES THAT THE TESTATOR SIGNED THIS WISCONSIN BASIC WILL IN OUR PRESENCE, ALL OF US BEING PRESENT AT THE SAME TIME, AND WE NOW, AT THE TESTATOR'S REQUEST, IN THE TESTATOR'S PRESENCE AND IN THE PRESENCE OF EACH OTHER, SIGN BELOW AS WITNESSES, DECLARING THAT THE TESTATOR APPEARS TO BE OF SOUND MIND AND UNDER NO UNDUE INFLUENCE.

Signature ..... Residence Address: .....
Print Name
Here: ....

Signature ..... Residence Address: .....
Print Name
Here: ....

.....
Signature of Testator

WISCONSIN BASIC WILL WITH TRUST

WIS. STATUES 853.56

THE FOLLOWING IS THE FORM FOR THE WISCONSIN BASIC WILL WITH TRUST

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS FORM CONTAINS A TRUST FOR YOUR FAMILY. IF YOU DO NOT WANT TO CREATE A TRUST, DO NOT USE THIS FORM.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS, AND IT DOES NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISER.

4. THIS WILL MAY NOT WORK WELL IF YOU HAVE CHILDREN BY A PREVIOUS MARRIAGE OR IF YOU HAVE BUSINESS PROPERTY, PARTICULARLY IF THE BUSINESS IS UNINCORPORATED.

5. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS WISCONSIN BASIC WILL WITH TRUST. YOU MAY REVOKE THIS WISCONSIN BASIC WILL WITH TRUST, AND YOU MAY CHANGE IT BY SIGNING A NEW WILL.

6. THE FULL TEXT OF THIS WISCONSIN BASIC WILL WITH TRUST, THE DEFINITIONS, THE PROPERTY DISPOSITION CLAUSES AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF WISCONSIN (CHAPTERS 851 TO 882 OF THE WISCONSIN STATUTES).

7. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD READ AND CAREFULLY FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL. EACH WITNESS MUST SIGN HIS OR HER NAME WITH YOU AND THE OTHER WITNESS PRESENT.

8. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

9. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

11. IF THIS WISCONSIN BASIC WILL WITH TRUST DOES NOT FIT YOUR NEEDS, YOU MAY WANT TO CONSULT WITH A LAWYER.

Signature of Testator.....

WISCONSIN BASIC WILL WITH TRUST OF

....

(Insert Your Name)

Article 1. Declaration.

This is my will and I revoke any prior wills and codicils (additions to prior wills).

Article 2. Disposition of My Property

2.1. PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS. Except as provided in paragraph 2.2, I give all my furniture, furnishings, household items, recreational equipment, personal automobiles and personal effects to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2 GIFTS TO PERSONS OR CHARITIES. I make the following gifts to the persons or charities in the cash amount stated in words (.... Dollars) and figures ($....) or of the property described. I SIGN IN EACH BOX USED. I WRITE THE WORDS "NOT USED" IN THE REMAINING BOXES. If I fail to sign opposite any gift, then no gift is made. If the person mentioned does not survive me or if the charity does not accept the gift, then no gift is made.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. ....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. ....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. ....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. ....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR. ....

2.3 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph by writing my signature on the line next to the title of the Property Disposition Clause I wish to adopt. I SIGN ON ONLY ONE LINE. I WRITE THE WORDS "NOT USED" ON THE REMAINING LINES. If I sign on more than one line or if I fail to sign on any line, the property will be distributed as if I did not make a will in accordance with Chapter 852 of the Wisconsin Statutes.

IF YOU HAVE A SUBSTANTIAL ESTATE, CHOOSING CLAUSE (a) OR (b) MIGHT NOT BE THE MOST ADVANTAGEOUS TAX OPTION AVAILABLE TO YOU. If you have questions concerning the tax implications of these clauses, you should consult a competent tax adviser.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. .....

(b) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION UNTIL I HAVE NO LIVING CHILD UNDER .... YEARS OF AGE. .....

(IF YOU DO NOT WANT 21 YEARS OF AGE TO APPLY, PRINT A DIFFERENT AGE, 18 OR ABOVE, IN CLAUSE (b) AND SIGN ON THE LINE BESIDE THAT CLAUSE.)

Article 3. Nominations of Personal Representative, Trustee and Guardian

3.1. PERSONAL REPRESENTATIVE. (Name at least one.)

I nominate the person or institution named in the first box of this paragraph to serve as my personal representative. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes. I confer upon my personal representative the authority to do and perform any act which he or she determines is in the best interest of the estate, with no limitations. This provision shall be given the broadest possible construction. This authority includes, but is not limited to, the power to borrow money, pledge assets, vote stocks and participate in reorganizations, to sell or exchange real or personal property, and to invest funds and retain securities without any limitation by law for investments by fiduciaries.

FIRST PERSONAL REPRESENTATIVE

SECOND PERSONAL REPRESENTATIVE

THIRD PERSONAL REPRESENTATIVE

3.2. TRUSTEE. (Name at least one.)

Because it is possible that after I die my property may be put into a trust, I nominate the person or institution named in the first box of this paragraph to serve as trustee of that trust. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST TRUSTEE

SECOND TRUSTEE

THIRD TRUSTEE

3.3. GUARDIAN. (If you have a child under 18 years of age, you should name at least one guardian of the child.)

If my spouse dies before me or for any other reason a guardian is needed for any child of mine, then I nominate the person named in the first box of this paragraph to serve as guardian of the person and estate of that child. If the person does not serve, then I nominate the person named in the second box of this paragraph to serve as guardian of that child.

FIRST GUARDIAN

SECOND GUARDIAN

3.4. BOND.

My signature in this box means I request that a bond, as set by law, be required for each individual personal representative, trustee or guardian named in this will. IF I DO NOT SIGN IN THIS BOX, I REQUEST THAT A BOND NOT BE REQUIRED FOR ANY OF THOSE PERSONS.

I sign my name to this Wisconsin Basic Will With Trust on .....(date), at.....(city),..... (state).

Signature of Testator .....

STATEMENT OF WITNESSES (You must use two adult witnesses.)

EACH OF US DECLARES THAT THE TESTATOR SIGNED THIS WISCONSIN BASIC WILL WITH TRUST IN OUR PRESENCE, ALL OF US BEING PRESENT AT THE SAME TIME, AND WE NOW, AT THE TESTATOR'S REQUEST, IN THE TESTATOR'S PRESENCE AND IN THE PRESENCE OF EACH OTHER, SIGN BELOW AS WITNESSES, DECLARING THAT THE TESTATOR APPEARS TO BE OF SOUND MIND AND UNDER NO UNDUE INFLUENCE.

Signature ..... Residence Address: .....
Print Name Here: ....

Signature ..... Residence Address: .....
Print Name Here: ....

History: 1983 a. 376; 1993 a. 304.