§ 35:119. Standard will for married couple—No minor..., 10 Florida Jur Forms...

10 Florida Jur Forms Legal & Bus. § 35:119
Florida Jur Forms Legal and Business
Database updated January 2013
Estate Planning
Chapter 35. Wills
IV. Will Drafting Generally
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Summary Correlation Table

§ 35:119. Standard will for married couple—No minor children—Including self-proof

LAST WILL AND TESTAMENT OF [NAME OF TESTATOR]

I, [name of testator], a resident of [name of county], Florida, being of sound and disposing mind and memory, now revoke any and all wills and codicils previously made by me, and I make, publish and declare this to be my Last Will and Testament.

Debts and Expenses.

1. Debts and Expenses. I direct that any debts for which my estate becomes legally obligated to pay, including funeral expenses and costs of administration, be paid as soon as practicable after my death.

Confirmation of Joint Ownership with Spouse.

2. Confirmation of Joint Ownership with Spouse. I confirm that my spouse, [name of spouse], and I own certain real and personal property as tenants by the entirety. I also confirm that, if my spouse survives me, [he/she] shall, by operation of law, become the sole owner of all property owned as tenants by the entirety on my death. If any passbook, certificate or other document evidencing that property is found among my effects, I direct my personal representative to deliver the same to my spouse. If we die under circumstances that there is not sufficient evidence to determine the order of our deaths, then one-half of that property shall pass under this will and one-half shall pass under my spouse's will.

Memorandum of Tangible Personal Property.

3. Memorandum of Tangible Personal Property. I give, devise and bequeath those certain items of my tangible personal property listed in the last dated writing signed by me and in existence at the time of my death to the persons listed in that writing. The writing will have no significance apart from its effect on the disposition of my property by this Will. If no such writing is found and properly identified by my personal representative within [number of days] days after my personal representative is appointed by the court, it will be conclusively presumed that no such writing exists. If any person named in the writing
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predeceases me, then the gift to that person will lapse and pass as part of the tangible personal property residue below, unless otherwise stated in the writing.

Tangible Personal Property Residue.

4. Tangible Personal Property Residue. I give, devise and bequeath all of the rest of my tangible personal property, which is not disposed of under the Memorandum of Tangible Personal Property, which tangible personal property may include automobiles, jewelry, clothing, household goods, and personal effects, and insurance policies on the tangible personal property, and insurance proceeds of them, to my spouse, [name of spouse], if my spouse survives me; but if my spouse predeceases me, then in equal shares to my children [names of children], who survive me; but if any child predeceases me, then to the other of my children who survive me. If none of my children survives me, then this gift will lapse and pass as part of the residue in Paragraph 5 below. The cost of delivery of each item will be paid by my estate.

Residue.

5. Residue. I give, devise, and bequeath all of the rest, residue and remainder of my estate, real, personal, or mixed, as follows:

Spouse.

A. Spouse. If my spouse, [name of spouse], survives me, my personal representative will distribute all of my residuary estate to my spouse. If my spouse does not survive me, then this gift will lapse. If my spouse and I die under such circumstances that there is not sufficient evidence to determine the order of our deaths, then it shall be presumed that my spouse did not survive me.

Children.

B. Children. However, if the above residue provision fails, my personal representative will distribute all of my residuary estate in equal shares to my children, [names of children], natural or adopted, who survive me. If any child predeceases me, then his or her share will pass, per stirpes, to his or her lineal descendants, natural or adopted, if any, who survive me; but if there are none, his or her share will lapse and pass equally as part of the shares of my other named children. If none of my named children survive me or leave lineal descendants who survive me, then this gift will lapse.

Intestate Heirs.

C. Intestate Heirs. However, if the above residue provisions fail, my personal representative will distribute all of the residuary estate, according to the order of intestate succession in the State of Florida, one-half to those persons who would have been my heirs if I had died intestate and distributed in the same shares those persons would have received in that case, and one-half to those persons who would have been heirs of my spouse if my spouse had died intestate immediately after my death and distributed in the same shares those persons would have received in that case.
Powers of Appointment Not Exercised.

6. Powers of Appointment Not Exercised. If, at the time of my death, I have the right to exercise any power of appointment by will or otherwise, I declare that nothing in this will shall be deemed to be an exercise of that power.

Estate Tax Apportionment.

7. Estate Tax Apportionment. I direct that estate taxes will be apportioned in accordance with Florida law.

Personal Representative.

8. Personal Representative. I appoint [name of personal representative] as my personal representative, [name of first alternate personal representative] as my first alternate personal representative, [name of second alternate personal representative] as my second alternate personal representative, and [name of third alternate personal representative] as my third alternate personal representative, each to serve in the order indicated on the death, resignation, incapacity of, or failure to qualify and serve as to, the prior personal representative or alternate. I direct that my personal representative or named alternate will serve without bond and will have general power of sale of all property at both public and private sale in any jurisdiction.

In witness, I have here set my hand and seal to this, my Last Will and Testament, on [date of execution], at [street address], [name of city], [name of county], Florida.

____________ [Name of testator]
[Address of testator]

We, the undersigned, certify that [name of testator] signed the above instrument in our presence and at the time published and declared the same to be [his/her] Last Will and Testament, and that we, in [his/her] presence and at [his/her] request, and in the presence of each other, have here subscribed our names as attesting witnesses to the testator's execution of this instrument, at [street address], [name of city], [name of county], Florida, on [date of execution].

____________ [Name of witness 1]
[Address of witness 1]

____________ [Name of witness 2]
[Address of witness 2]

STATE OF FLORIDA
[NAME OF COUNTY]

SELF-PROVING AFFIDAVIT OF TESTATOR AND ATTESTING WITNESSES

I, [name of testator], declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

____________ [Name of testator]
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We, [name of witness 1] and, [name of witness 2] have been sworn by the officer signing below, and declare to that officer on our oaths that the testator declared the instrument to be the testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the testator and of each other.

[Name of witness 1]
[Address of witness 1]
[Name of witness 2]
[Address of witness 2]

Acknowledged and subscribed before me by the testator, [name of testator], who is personally known to me or who has produced [type of identification] as identification, and sworn to and subscribed before me by the witnesses, [name of first witness] who is personally known to me or who has produced [type of identification] as identification and [name of second witness] who is personally known to me or who has produced [type of identification] as identification, and subscribed by me in the presence of the testator and the subscribing witnesses, all on [date of execution].

[Name of officer]
[Official seal]

Notes

Drafter's Notes

This will contains the notary clause that makes it self-proving under § 732.503, Fla. Stat.

A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying. § 117.05(5)(b), Fla. Stat. For acceptable forms of identification, see § 117.05(5)(b)(2), Fla. Stat.

As of January 1, 2008, any document requiring notarization may be notarized electronically. § 117.021 Fla. Stat.