§ 35:122. Married testator—With children—Estate to... 10 Florida Jur Forms...

10 Florida Jur Forms Legal & Bus. § 35:122

Florida Jur Forms Legal and Business
Database updated January 2013

Estate Planning
Chapter 35. Wills
IV. Will Drafting Generally
   B. Forms
      2. Complete Will Forms

Summary Correlation Table

§ 35:122. Married testator—With children—Estate to spouse—Alternatively to children

Will of [Name of testator]

I, [name of testator], of [name of city], Florida, make this my will and revoke all prior wills and codicils.

Clause One Taxes and Expenses

My executor will pay all expenses of my last illness and funeral, costs of administration, including ancillary costs of safeguarding and delivering legacies, and other proper charges against my estate (excluding debts secured by real property or life insurance). My executor will also pay all estate and inheritance taxes assessed by reason of my death, except that the amount, if any, by which the estate and inheritance taxes are increased as a result of the inclusion of property in which I may have a qualifying income interest for life or over which I may have a power of appointment is to be paid by the person holding or receiving that property. Interest and penalties concerning any tax are to be paid and charged in the same manner as the tax. I waive for my estate all rights of apportionment or reimbursement for any payments made pursuant to this article. If, however, the cash and readily marketable assets in the principal of the residue of my estate are insufficient to make the foregoing payments in full, my executor must certify the amount of the insufficiency to the then acting trustee under the trust agreement hereafter mentioned for payment.

My executor's selection of assets to be sold to make the foregoing payments or to satisfy any pecuniary legacies, and the tax effects thereof, are not to be subject to question by any beneficiary.

My executor may make such elections and allocations under the tax laws as my executor deems advisable, without regard to the relative interests of the beneficiaries and without liability to any person. No adjustment are to be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by my executor or by the trustee under the trust agreement hereafter mentioned.

The balance of my estate which remains after the foregoing payments have been made or provided for are to be disposed of as provided below.
Clause Two Family

My [husband/wife]'s name is [name of spouse], and [he/she] is referred to in this document as [my husband/my wife]. I have [number of children] children now living; namely: [name of child], born [date of birth]; [name of child], born [date of birth]; and [name of child], born [date of birth].

Clause Three Personal Effects

I give all my personal and household effects, automobiles, boats and collections, and any insurance policies thereon, to my [husband/wife] if [he/she] survives me by [number of days] days, otherwise to my children who so survive me to be divided equally among them as they agree. My executor must sell any property as to which there is no agreement within [number of days] days after admission of this will to probate and add the proceeds to the residue of my estate.

If a child is a minor at the time of distribution, the guardian of or person in loco parentis to the child must represent him or her in the division of the property, receipt for and hold his or her share or sell all or any part of it, and deliver the share or proceeds to the child when he or she reaches majority, or earlier if the guardian or person considers it to be for the child's best interests.

Clause Four Pour-Over (Residue)

All the residue of my estate, wherever situated, including lapsed legacies, but expressly excluding any property over which I may have power of appointment at my death, I give to the then acting trustee under the trust agreement executed by me on [date of execution of trust], before the execution of this will, with myself as trustee, to be added to the trust estate held under that trust agreement as in effect at my death.

Clause Five Guardian Appointment

If my [husband/wife] does not survive me or dies after my death without providing for the custody of a minor child of mine, I name [name of guardian] as guardian of the person and the estate of that child. No bond or security shall be required of any guardian.

Clause Six Executor Appointment

I appoint [name of executor] as executor of this will. If for any reason [name of executor] is unwilling or unable to act as executor as to any property, I appoint [name of alternate executor] as executor.
Executor Powers

I give my executor power to retain any property that I own at my death, and to invest in bonds, stocks, notes, bank deposits, shares of registered investment companies, or other property, and to retain or make any investment without liability, regardless of type, quality, marketability or any rule requiring diversification; to lease, borrow with or without security from any lender, sell or exchange all or any part of my estate, real or personal, for such prices and upon such terms as my executor deems proper; to compromise, contest, prosecute or abandon claims in favor of or against my estate; to distribute income and principal in cash or in kind, or partly in each, and to allocate or distribute undivided interests or different assets or disproportionate interests in assets (and no adjustment is to be made to compensate for a disproportionate allocation of unrealized gain for federal income tax purposes), and to value my estate in order to make allocation or distribution, and no action taken by my executor pursuant to this power is to be subject to question by any beneficiary; to determine in cases not covered by statute the allocation of receipts and disbursements between income and principal; to deal with the fiduciary of any trust or estate in which any beneficiary under the aforementioned trust agreement has an interest, though an executor hereunder is such fiduciary; to deal with a corporate executor hereunder individually or a parent or affiliate company; and to execute and deliver necessary instruments and give full receipts and discharges. My executor will have power to inspect and monitor businesses and real property (whether held directly or through a partnership, corporation, trust or other entity) for environmental conditions or possible violations of environmental laws; to remediate environmentally-damaged property or to take steps to prevent environmental damage in the future, even if no action by public or private parties is currently pending or threatened; to abandon or refuse to accept property which may have environmental damage; my executor may expend estate funds to do the foregoing, and no action or failure to act by my executor pursuant to this power shall be subject to question by any beneficiary. The foregoing powers are to be exercised by my executor without authorization by any court and, as to property subject to administration outside the state of my domicile, only with the approval of my domiciliary executor. No bond or security is to be required of any executor wherever acting. If permitted by law and if not inconsistent with the best interests of the beneficiaries as determined by my executor, the administration of my estate is to be independent of the supervision of any court.

Clause Seven Headings

The headings in this will are for convenience of reference only and are not be considered in the interpretation of this will.

In witness, I have 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 signator]
[Address of signator]

We, the undersigned, certify that [name of testator] signed and sealed 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 subscribed our names as attesting witnesses thereto, at [street address], [name of city], [name of county], Florida, on [date of execution].

_________________ [Name of witness 1]
[Address of witness 1]
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 signator]
[Address of signator]

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.
§ 35:122. Married testator—With children—Estate to..., 10 Florida Jur Forms...