10 Florida Jur Forms Legal & Bus. § 35:124

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

§ 35:124. Entire estate to spouse—Alternatively to children

WILL OF [NAME OF TESTATOR]

I, [name of testator], [OPTIONAL: also known as [alternate names of testator]], [OPTIONAL: formerly known as [maiden name of testator]], [number of years] years of age, residing at [street address], [name of city],[name of county], Florida, being of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence of any person, declare this to be my last will and testament, and I revoke and cancel all previous wills and codicils made by me.

Clause One Marital Status; Spouse's Name

I am married. My [husband/wife]'s name is [name of spouse]. All references in this will to my “spouse” or my [“husband”/“wife”] are to [him/her].

Clause Two Children

I have [number of children] living children, the issue of my marriage to [name of spouse], as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>Present Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Name of Child 1]</td>
<td>[Date of Birth of Child 1]</td>
<td>[Present Address of Child 1]</td>
</tr>
<tr>
<td>[Name of Child 2]</td>
<td>[Date of Birth of Child 2]</td>
<td>[Present Address of Child 2]</td>
</tr>
<tr>
<td>[Name of Child 3]</td>
<td>[Date of Child 3]</td>
<td>[Present Address of Child 3]</td>
</tr>
</tbody>
</table>

2. I have no deceased children.
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3. References in this will to my [child/children] include all the children mentioned in Paragraph 1 of this Clause of my Will and any child or children that may subsequently be born out of my marriage to my [husband/wife] or adopted by myself and my [husband/wife].

Clause Three Funeral and Burial; Disposition of Body

I direct that my funeral be conducted by [name of funeral home] at [street address], [name of city], [name of county], [name of state], and that after the funeral my body be cremated and the ashes placed in an urn and kept at [street address], [name of city], [name of county], [name of state].

Clause Four Bequests and Devises to Spouse

1. I give, bequeath, and devise to my spouse all of my properties, real, personal, and mixed, wherever located, and all rights and interests which I may be entitled to devise and bequeath.

2. In the event my spouse does not survive me, then I give all of the above-mentioned properties to my children, share and share alike. In the event any of my children predeceases me, the heirs of the deceased child or children shall take by representation and share only in the portion that the deceased child or children would have received had he or she survived me.

Clause Five Debts and Expenses

I direct that all my just debts, including the expenses of my last illness and funeral, shall be paid out of my estate by my personal representative.

Clause Six Disinheritance

I have, except as otherwise provided in this will, intentionally and with full knowledge, omitted to provide for my heirs who may be living at the time of my death, including any person or persons who may, after the date of this will, become my heir or heirs by reason of marriage or otherwise.

Clause Seven Ademption

In the event that I am not the owner, at the time of my death, by reason of having sold or given away, or having lost, destroyed, or otherwise disposed of, any of the items of personal property I have given and bequeathed to the persons named in clause four of this will, then in lieu of any such gifts, I give these persons $[dollar amount of gift].
Clause Eight Advancements

All advancements I have made, or may subsequently make, to any of my children shall be in addition to, and not in satisfaction of, any legacies or other benefit given them by my will.

Clause Nine Simultaneous Death

In the event the death of my spouse and myself should occur simultaneously, or in a common accident, or under circumstances that make it difficult to determine who died first, or in the event my spouse dies within a period of [number of months not exceeding six] after the date of my death, it shall be presumed that I survived my spouse and my estate shall be disposed of in accordance with such a presumption.

Clause Ten Personal Representative

1. I nominate and appoint [name of representative], who resides at [street address], [name of city], [name of county], Florida, as my personal representative, to serve [without/with] bond.

2. If [name of personal representative] does not survive me, or if [he/she] does not qualify or is unwilling to act as personal representative, I nominate and appoint [name of bank/name of trust company], of [street address], [name of city], [name of county], Florida, or any successor or assign of that [bank/trust company], to be my personal representative, to serve [with/without] bond.

Clause Eleven Guardian of Minor Children

I appoint [name of guardian], [street address], [name of city], [name of county], Florida, as the guardian of the person and property of any child of mine who at the time of my death is a minor, the guardian to serve [with/without] bond.

In witness, I sign my name to this Last Will and Testament on [date of execution], at [street address], [name of city], [name of county], Florida, in the presence of [name of witness 1] and [name of witness 2], attesting witnesses, who sign their names here at my request and in my presence.

________________ [Name of testator]
[Address of testator]

Attestation Clause
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On the above date, [name of testator], known to us to be the person whose signature appears at the end of this will, declared to us, the undersigned, that the foregoing instrument, consisting of [number of pages] pages, including the page on which we have signed as witnesses, was [his/her] will. [He/She] then signed the will in our presence, and at [his/her] request, in [his/her] presence and in the presence of each other, we now sign our names as witnesses.

___________ [Name of witness 1]
[Address of witness 1]

___________ [Name of witness 2]
[Address of witness 2]

[Acknowledgment]

Notes

Tax Notes

Unless an estate is small, leaving property to both the spouse and children does not generally result in the minimum estate tax. In most situations the better tax strategy is to leave all property to the spouse so that the marital deduction will lead to a zero estate tax (26 U.S.C.A. § 2056), and if the estate exceeds $600,000, use a credit-shelter trust. The spouse is then in a position to give away the estate to the children, making maximum use of the annual exclusion and the unified tax credit. Whatever has been given away by the time of the spouse's death will reduce the estate tax in his or her estate and may even reduce the applicable tax rate because he or she has reduced the overall size of the estate.

No marital deduction under the estate tax is permitted in property in which the surviving spouse's interest is subject to termination. 26 U.S.C.A. § 2056(b)(1). The surviving spouse must have total use and control over the property for it to qualify under the marital deduction. Anything less is a terminable interest.

Several exceptions exist to this rule. Among them is one covering a requirement that a spouse survive the decedent. 26 U.S.C.A. § 2056(b)(3). As long as the period for survival does not exceed six months—and the spouse, in fact, survives six months—the property passing to the spouse qualifies. Also permitted is a requirement that the spouse survive a common disaster that results in the death of both the decedent and the spouse. Treas. Reg. § 20.2056(b)-3.

ClauseFive.

Drafter's Notes

The Simultaneous Death Law (§ 732.601, Fla. Stat.) provides that where the title to property or its devolution depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if that person had survived. § 732.601(1), Fla. Stat.

Under the Simultaneous Death Law, when two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is insufficient evidence that the beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal parts as there are successive beneficiaries and the parts shall be distributed to those who would have taken if each designated beneficiary had survived. § 732.601(2), Fla. Stat.
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The Law further provides that when there is insufficient evidence that two joint tenants or tenants by the entirety died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them so died, the property thus distributed shall be in the proportion that one bears to the number of joint tenants. § 732.601(3), Fla. Stat.

Furthermore, when the insured and the beneficiary in a policy of life or accident insurance have died and there is insufficient evidence that they died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. § 732.601(4), Fla. Stat.


A.L.R. Library

Wills: construction of provision as to which of two or more parties shall be deemed the survivor in case of death simultaneously, in a common disaster, or within a specified period of time, 40 A.L.R.3d 359

ClauseEight.

Drafter's Notes

The term “advancements” has no tax counterpart to its legal significance. An advancement, for tax purposes, is nothing but a gift of property that is subject to the provisions of the gift tax law, 26 U.S.C.A. §§ 2501 to 2524. Nor has the term any significance for estate tax purposes except that to the extent, under local law, it affects the amount in the estate or the amount passing to a spouse under the marital deduction. 26 U.S.C.A. § 2056.

Acknowledgments

Drafter's Notes

For forms of acknowledgments, see §§ 35:327, 35:328.

A will or codicil executed in conformity with the requirements of § 732.502, Fla. Stat. may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will. § 732.503, Fla. Stat.

The necessity for proving a will by witnesses who may live far away can be eliminated if the will is made self-proved at the time it is executed.
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For a discussion of self proof of wills, see Fla. Jur. 2d, Decedents' Property § 153
