Will
of
AAA

I, AAA, a resident of **name of county** County, Texas, declare that this is my will and I revoke all earlier wills and codicils.

Article I

Family Statement

## Wife and Children. I am married to **name of wife**, whom I refer to as my wife in my will. I have **number of children** children: **name(s) of children**. When used in my will, the terms, “my child” or “my children” shall refer to **name(s) of children** and any other children born to or adopted by me after the date of this will. **[Attorney note: If the client wants to define “children” as including someone -- such as a step-child or grandchild – as if he/she were a child, please ask a Clinic Mentor to collaborate with you on this paragraph.]**

## Disinheritance of **name of disinherited person**. **[Attorney Note: Delete this paragraph if Testator is Not Disinheriting Anyone]** I have intentionally made no provision under this will for **name of disinherited person** and I direct that my estate shall be distributed as if **name of disinherited person** predeceased me, so that **name of disinherited person** shall receive no benefits under this will. **[Optional:]** This disinheritance includes the children and other descendants of **name of disinherited person**.

## Article II

## Disposition of Estate

## **[\*Attorney Note: Options 1 and 2 below are the most commonly used. Choose one of them, if appropriate, and delete the other Option. If neither Option 1 nor Option 2 is appropriate, there are other options on your handout entitled “Sample Dispositions.”]**

## **Option 1: all to wife, otherwise to children**

## If My Wife Survives Me. If my wife survives me, I give her all of my estate.

## If My Wife Does Not Survive Me. If my wife does not survive me, I give all of my estate in equal shares to my children. If any child of mine fails to survive me, but has one or more descendants who do survive me, then the share that the deceased child would have received (if living) shall be distributed to the deceased child’s descendants, per stirpes (defined below).

## Contingent Beneficiaries. If neither my wife nor any of my descendants survive me, I give all of my estate to **alternate beneficiary or beneficiaries**. If any part of my estate is not disposed of by the foregoing provisions, then I give all my estate to my heirs, meaning the persons who would be my heirs at law as to my separate personal property if I died intestate and domiciled in Texas.

## **Option 2: all to children (or their descendants)**

## Disposition of Estate. I give all of my estate in equal shares to my children. If any child of mine fails to survive me, but has one or more descendants who survive me, then the share that the deceased child would have received (if living) shall be distributed to the deceased child’s descendants, per stirpes.

## Contingent Beneficiaries. If no child, nor any other descendant of mine survives me, I give all of my estate to **alternate beneficiary or beneficiaries**. If any part of my estate is not disposed of by the foregoing provisions, then I give all my estate to my heirs, meaning the persons who would be my heirs at law as to my separate personal property if I died intestate and domiciled in Texas.

## Article III

## Independent Executor

## Appointment of Independent Executor. I appoint **name of executor** as independent executor of my will and of my estate. I direct that no bond be required of any independent executor and that no action shall be had in the county court in relation to the settlement of my estate other than the probating and recording of my will and the return of an inventory, appraisement and list of claims of my estate, or, if permitted by law, the filing with the court clerk of an affidavit in lieu of the inventory, appraisement, and list of claims.

## Appointment of Alternate Executors. If **name of executor** ceases or fails to serve as independent executor, I appoint the following to serve as independent executor: **[Attorney Note: delete un-used successor lines.]**

### 1. **name of first successor executor**; then

### 2. **name of second successor executor**; and then

### 3. **name of third successor executor**.

### A named successor independent executor is to serve only in the event the predecessor has ceased or failed to serve as executor.

# Article IV

# Guardians of Minor Children

# [Attorney Note: Delete all of Article 4 if Client has no minor children]

## Guardian. If it becomes necessary to have a guardian for my minor children, or any of them, I appoint **name of guardian** as guardian of the person and estate of my minor children, and direct that, to the extent permitted by law, no bond be required of the guardian.

## Alternate Guardian. If **name of guardian** ceases or fails to serve as guardian of the person or guardian of the estate of my minor children, I appoint **name of alternate guardian** as first alternate guardian of the person and first alternate guardian of the estate of my minor children, and direct that, to the extent permitted by law, no bond be required of the guardian.

## **[Attorney Note: Articles V through VII have been carefully drafted to be a “one size fits all” set of administrative provisions. Please collaborate with a Clinic Mentor if you believe any of these Articles should be revised.]**

## Article V

## Provisions Relating to Executors and Successor Executors

## Successor’s Authority and Responsibility. A successor independent executor shall possess and exercise all powers and authorities herein conferred on the original independent executor. A successor independent executor shall be responsible only for the assets delivered by the preceding independent executor or such independent executor’s legal representative, and may accept as correct the statement of the predecessor or such predecessor’s legal representative that these constitute all of the assets of the estate without any duty to inquire into the administration or accounting by the preceding independent executor. A successor independent executor shall not be responsible for or by reason of any act or omission of a predecessor independent executor.

## Powers of Independent Executor. My independent executor shall have all powers, rights, discretions, and immunities conferred upon independent executors by the Texas Estates Code, and upon trustees by the Texas Trust Code as those powers, rights, discretions, and immunities now exist or as they may hereafter be amended. In addition to the above powers, rights, discretions, and immunities, my independent executor shall be specifically authorized:

### To sell any real property not specifically bequeathed or devised for such prices and upon such terms as my executor, in the exercise of my executor’s absolute discretion, shall determine;

### To make non-pro rata divisions of any community property with my wife’s consent if I am married at the time of my death, as long as the fair market values of the assets are used at the time of division;

### To make non-pro rata partitions and distributions of real and personal property, so long as the beneficiaries receive assets of a value equal to the fair market value of their respective interests as of the time of distribution;

### To purchase assets from my estate for fair market value, pursuant to the provisions of Section 356.652 of the Texas Estates Code, provided at such time my wife or any of my descendants is serving as independent executor;

### To make loans to a beneficiary of my estate; and

### To delegate to one or more agents any discretionary or ministerial power by a writing stating the scope and duration of powers being delegated, to whom delegated, and signed by my independent executor.

## No Compensation for Individual Executor. No individual shall be entitled to compensation for serving as executor of this will and of my estate.

## Reimbursement of Expenses. The executor of this will and of my estate shall be reimbursed for all reasonable expenses, including attorney’s or accountant’s fees incurred in the administration of the estate.

## Article VI

## Payment of Debts, Expenses, and Taxes

## Debts and Expenses. All of my expenses, my one-half of any community debts, all other debts, and all funeral expenses that are payable as a result of my death and imposed with respect to any property, whether or not disposed of by my will, shall be paid out of my residuary estate.

## Secured Indebtedness. If any properties that I own at the time of my death are encumbered by mortgage or lien, my independent executor may pay only the installments due during the course of administration of my estate. The balance due on the indebtedness shall not be charged to or paid from my estate, and the persons receiving properties by my will shall take those properties subject to the indebtedness and shall reimburse my estate for any payments made prior to the distribution.

## Article VII

## Miscellaneous

The following definitions and provisions are given as assistance in connection with the construction and interpretation of my will.

## Gifts to Young Persons. If any property is to be distributed under this will to a person younger than age twenty-one, I authorize the executor to distribute that property instead to a custodian for the young person, under the Texas Uniform Transfers to Minors Act, or a similar act of any other state.

## Disabled Beneficiary. If any beneficiary under this will is receiving means-tested public benefits at the time of my death (a “Disabled Beneficiary”), then my executor is authorized but not required to distribute the Disabled Beneficiary’s share of my estate to an account for his or her benefit in a pooled trust managed by a non-profit organization, to be selected by my executor, rather than distributing the Disabled Beneficiary’s share outright to him or her.  My executor is authorized but not required to select Trust III of the Arc of Texas Master Pooled Trust established December 2, 2000 for this purpose.   Remainder beneficiaries of the joinder agreement shall be the same persons and entities who would take the share of such Disabled Beneficiary under this will if he or she died before me. If a pooled trust sub-account so established is terminated at a future time due to discontinuation of the pooled trust or for any other reason, the assets in the sub-account that were originally directed from this trust shall be distributed to a different pooled trust or to a new individual trust with provisions as to distributions substantially similar to this trust and with the same representatives and remainder beneficiaries as the pooled-trust subaccount. My executor shall have no duty to investigate whether a beneficiary is receiving means- tested public benefits at the time of my death and shall have no liability for exercising or failing to exercise his or her power under this paragraph.

## Property Disposed of by Will. By my will I dispose of my one-half of the community property of the community estate of my wife and me, and any separate property that I might own at the time of my death. I direct that my wife’s one-half of our community property be distributed to her as soon as practicable after my death.

## No Contest. If any person commences or joins, directly or indirectly, proceedings in any court to oppose the admission of this Will to probate or to have this Will set aside or be declared invalid, that person shall forfeit any and all right, title or interest in or to my estate under this Will.

## Survival. A requirement that a beneficiary “survive” a person’s death or some other event or be “surviving” or “living” shall be interpreted to mean “survival by at least thirty days.” This thirty-day period shall begin at 12:01 a.m. of the day immediately following the death or event and shall end at 12:00 o’clock midnight of the thirtieth day.

## Spouses. A "spouse," or “husband,” or “wife” of a person does not include any individual who, at the relevant time, is divorced or legally separated from the person, or engaged in pending divorce proceedings with the person. A "surviving spouse" of a person means the individual, if any, who was the person's "spouse" at the time of his or her death.

## Children and Descendants. Except as otherwise provided herein, a “child” of an individual means a child determined in accordance with Section 160.201 of the Texas Family Code, as it may be amended from time to time. An adopted person shall be a child of the adopting parent(s), but only if legally adopted before attaining age eighteen. A posthumous child who survives birth shall be treated as living at the death of his or her parent. An individual’s “descendants” means the individual’s children, the children of those children, and so on, determined in accordance with the preceding.

## Per Stirpes. Whenever a distribution of property is to be made "per stirpes" to the descendants of any person, the property shall be divided into as many shares as there are then living children of the person plus any deceased children of the person who left descendants who are then living. One share shall be distributed to each living child and the share for each deceased child shall be divided among his or her then living descendants in the same manner.

## Gender and Number. Pronouns, nouns and terms as used in my will shall include the masculine, feminine, neuter, singular and plural forms thereof wherever appropriate to the context.

## Headings. The headings employed are for reference purposes only and shall not in any way affect the meaning or interpretation of the provisions of my will.

I, AAA, as Testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Will, that I have willingly made and executed it in the presence of the undersigned witnesses, all of whom were present at the same time, as my free act and deed, and that I have requested each of the undersigned witnesses to sign this Will in my presence and in the presence of each other. I now sign this Will in the presence of the attesting witnesses and the undersigned authority on the following date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

AAA

The undersigned, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, each being above fourteen years of age, after being duly sworn, declare to the Testator and to the undersigned authority that the Testator declared to us that this instrument is his Will and that the Testator requested us to act as witnesses to his Will and signature. The Testator then signed this Will in our presence, all of us being present at the same time. The Testator is eighteen years of age or over, and we believe the Testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the Testator, each other, and the undersigned authority on the following date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(Witness Signature)  (Address)

(Witness Signature)  (Address)

SUBSCRIBED AND SWORN TO BEFORE ME by \_\_\_\_\_, Testator, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, witnesses, on the following date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Notary Public, State of Texas