

## TERMINOLOGY (Note: We will NOT be discussing Medicaid issues here. Far too complex.)

- 1) Testate – Having a valid (written) will in place @ time of death

Intestate – No will when die

State law will determine disposition of your assets

- 2) Non-Probate Assets – Title transfer controlled by a legal survivorship mechanism
  - a. I.e., named beneficiary a life insurance policy or retirement plan
  - b. Most common – JWROS on a residence deed

Probate Assets – Assets owned solely by the decedent that do **NOT** have a survivorship right or named beneficiary

Note: Some issues here are bank accounts when another's name is added.

- A. Joint Owner – Full rights to account while both living and becomes sole owner upon death of the joint owner
- B. Signature Authority – Named person is authorized signer in case of emergency or for convenience. NO ownership at death of account owner. Account goes into probate estate.

- 3) Will – Written document for disposition of probate assets
  - a. Must be 18 or over
  - b. Sound mind
  - c. Signed by testator
  - d. Signed by 2 witnesses (present at same time) \*
  - e. Must be written
  - In WV, a holographic (hand written) does NOT require witnesses. Issue with this type is clarity and completeness.
- 4) Elective Share – Surviving spouse of WV decedent can elect against the decedent's will or intestate share and take an elective share of the "Decedents Augmented Estate".  
Progression: Years 1-10: 3% per year; Years 11-15: 4% per year. Maximum: 50%
- 5) TOD accounts/TOD deeds – Transfer on death. NO ownership transfer until death of principal. If beneficiary deceases before principal, transfer is void. (Non-Probate asset)
- 6) Real Estate Ownership
  - a. JT with Rights of Survivorship – Most common language in spousal owned property. At first death the ownership passes to the survivor. All ownership equal. Each "owner" can sell or transfer their share to someone else. This effectively nullifies survivorship rights and ownership converts to Tenants-in-Common. Negative: Judgment creditor can force sale of property.

- b. Tenancy by the Entirety – Allowed ONLY between spouses. The property is protected from any debts incurred by the spouse who died. THIS FORM OF OWNERSHIP IS NOT ALLOWED IN WV.
  - c. Tenancy in Common – Undivided share of asset (real or intangible). Individual can sell or transfer their interests without permission of other “tenants”.
- 7) Trust – Arrangement whereby one person (or a legal entity, i.e., bank) holds property as its nominal owner for the good of one or more beneficiaries (persons to be benefited by the trust).
- a. Revocable – Donor can change at any time
  - b. Irrevocable – Once signed, cannot be changed (generally)
- Both above can be:
- i. Living trust – Established while living
  - j. Testamentary trust – Established in a will (@ death)

One **issue to be aware** of: Trusts pay the beneficiary based on trust directions. Danger in today’s world is handing cash (assets) to someone who is not able to handle it. If the person is a habitual gambler or on drugs, the cash may be used for wrong purposes. Consider allowing the trustee discretionary power to withhold payments if, in his opinion, the beneficiary would be harmed by receiving the bequest.

The same issue is true with wills.

- c. Special Needs Trust – Trust with special needs person as beneficiary. Requires knowledgeable counsel to set trust up properly.
  - d. Work Incentive Trust (RDT) – Trust designed for young beneficiaries to encourage a work ethic. Trust makes distributions as an incentive for beneficiary to find gainful employment. Exceptions for church oriented and/or social oriented positions.
- 8) Per Stirpes/Per Capita
- a. Per Stirpes – Equally by 1<sup>st</sup> generation (if child deceased, their children inherit)
  - b. Per Capita – Equally to all living heirs (3 children but A deceased. A’s children get nothing)
  - c. Per Capita by Generation (or by representation)-Division equal within each generation

## LIFE DOCUMENTS

1. Power of Attorney (POA) – Legal document allowing someone else to act on your behalf
  - a. Financial – Named person can handle your financial affairs (property & monetary)
    - i. Durable-Continues even if principal is incapacitated  
Can be broad (general) or limited. Terminates on death of principal (or sooner if so stated)
    - ii. Limited POA-Only specified acts permitted
    - iii. Medical POA – Health care POA  
Grants power to another to make medical decisions for the principal if they are unable. Sometimes combined with a “**living will**” document wherein the principal issues instructions as to what medical procedures to enact or withhold.

NOTE: There are **potential dangers when naming your POA's**. In one instance, I dealt with a 2<sup>nd</sup> marriage older couple where the wife owned the house and most of the finances. She had named a daughter as her medical POA and her husband as her financial POA. As illness set in on her that was eventually terminal the husband sought to put her in 24 care, figuring the money was rightfully hers and should be used for her benefit. HOWEVER, the daughter having the medical POA refused to admit her anywhere, desiring instead to not spend the assets since at death (by mother's will) she would inherit everything. Mother died at home without the care she needed. Probably the husband could have gone to court and forced the issue but by the time it was resolved in court, mother would most likely have already died.

LESSON: Know the people you name as your POA(s).

2. Bank and Investment Accounts
  - a. Transfer on Death/Payable on Death – Accounts transfer on death of owner

### Bank Accounts-FDIC Coverage

FDIC covers deposits up to \$250,000 per account owner (\$500,000 for spouses). I.e., if a couple has a joint checking account with \$300,000, joint saving account with \$150,000 and a CD with \$200,000 (total of \$650,000), they are covered for the sum of these accounts only to \$500,000 (\$250,000 per account holder).

3. Pre-Nuptial/Ante-Nuptial Agreements  
Agreement to define each person's rights & responsibilities if the marriage ends (by death or divorce). Generally used :
  - i. When one party to the marriage has substantially greater wealth than the other party, or
  - ii. In 2<sup>nd</sup> marriagesPurpose is to keep assets separate throughout the marriage and in the final disposition after marriage.

4. Disclaimers

Used to deny acceptance of an inheritance. Disclaimed assets go to the next beneficiary as determined by the will, trust or intestate law.

5. Family Love Letter

This is a “non-controlling” document wherein one provides information about their assets and wishes. It has no legal status but can be of great assistance.

First it lists all one’s assets, how they are held (single, joint, etc.), where they can be found, description and value. If appropriate, it will also disclose named beneficiaries (i.e., life insurance or retirement accounts). This will facilitate the executor in handling of the estate. It should also provide information about where wills, trusts, etc., can be found.

Also, it can be used to disclose one’s wishes regarding his hopes and desires for his heirs. If one has already prearranged for his funeral those details should be disclosed. If not, funeral desires should be expressed.

Your executor will need to know ancestral information which can be disclosed here.

Outlines can be found on the internet by searching “**estate planning family love letter example**”

**NOTE:** Where you keep your will is of major importance. It should be kept safe and in a fireproof case if possible and your executor should know where to find it.

A **safe deposit box** at the local bank **may not be the best choice**. Problem there is that unless someone else has access to the safe deposit box (joint ownership) and they are available, no one can access the will. In that event, court action is needed to gain admittance into the box and remove the will. This can take some time and is a burdensome project.

6. Annual Gifting – In 2024, you can gift \$18,000 per person to as many persons as you desire. Special rules apply if gift is other than cash. If gift exceeds \$18,000, then it reduces ones lifetime gift exclusion and **REQUIRES** filing to notify IRS of the gift.

7. Lifetime Gift Exclusion – Each individual can gift a total of \$13,610,000 during life and at death before they owe gift and estate taxes. This amount is currently set to revert back to \$6,000,000 on 1/1/2026.

8. Life Insurance – Types:

a. Term Life – Best used to cover a specific need (i.e., mortgage). Employer provided life insurance is term. When one leaves the employment the policy lapses.

Main problem with term insurance is it becomes cost prohibitive as one ages.

b. Whole Life – This is a permanent coverage policy. Whole life premium remains constant throughout the life of the policy. Whole life policies also have option at some point to freeze the death benefit and stop paying premium. Alternative is to continue to pay premium and policy cash value and death benefit will increase annually. Generally a combination of both types of policies will provide the best coverage/benefit.

## WILL OUTLINE

Everyone age 18 & older should have a will. Even if there are no assets it will facilitate settlement of the estate and make life easier for family and friends.

For a single person, the will might only list one or two heirs. Most married couples want their assets to go to their spouse and/or children. Sounds simple enough until you get to the “what-ifs”. What if my spouse is deceased or my child deceased with children.

### **Disaster can result: (True life example)**

I.e., H & W have been married for years but have no children. W dies and has will leaving everything to H, no provision for H to live 30 days. H dies a week later without a will. In this event, H’s intestate heirs receive everything and W’s intestate heirs receive nothing.

This could have been avoided by various means: W using a trust; H having a will; or requiring survivor to live at least 30 days after decedent.

In estate planning, there are **two aspects** to consider-**Financial** (who will receive you assets & how much) and **Social** (when and how). It’s not enough to simply hand over you assets to others. You have to consider the effects of this transfer on the heir and what is best for the recipient. Are they ready to handle this bequest or should it be apportioned out and at what age or ages. What if some of the potential heirs are adopted children or step children.

The next page will give you an example of a will involving a couple with children and grandchildren (typical for those age 60 and over). Those who have minor children will face additional challenges.

## **FOR THOSE WITH MINOR CHILDREN:**

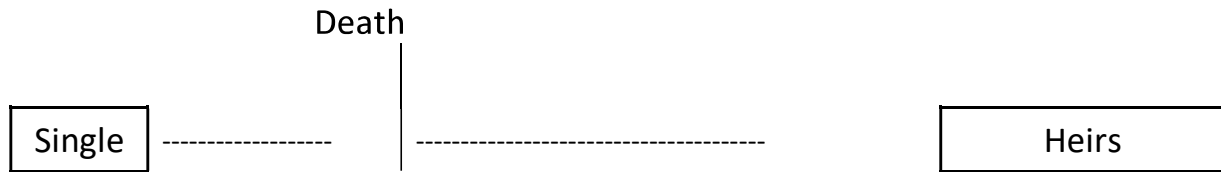
You are faced with more issues for your estate plan.

**First**, you have to decide on how and when your assets will pass to your children (keep in mind that a minor cannot receive a direct inheritance). Since your children cannot receive the assets in their own name(s), you have to name someone (trustee) to hold the assets and manage them until your children reach maturity. This can be an individual or an institution (i.e., a bank). If an individual is named then you should name an alternate (in event named individual cannot serve) and/or a mechanism for naming subsequent trustees, possibly with an institution as the alternate to assure permanence. Probably the trustee should be bonded in order to protect your heirs.

**Second**, you will need to select someone as guardian of your children. This can be the same person as is named the financial trustee but not necessarily. Sometimes the ones we chose as the best to raise our children are not the best to handle the assets left to them. In that event you will want to discuss with the potential guardian who you have selected as their financial trustee and how funds will be provided to assist in their caring for them financially.

**Simple will for single person.** Assets at death pass to heirs named in will.

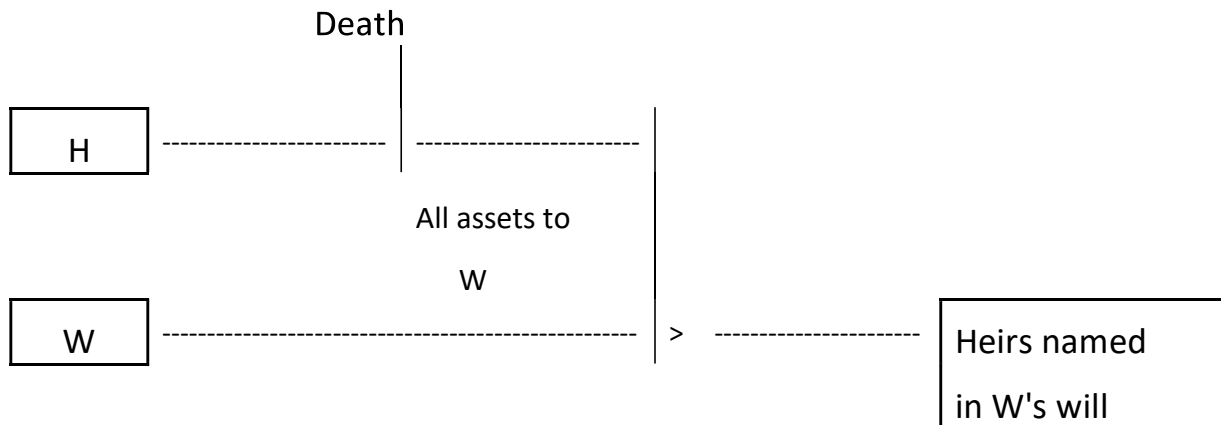
If no will then pass to closest relatives via WV Intestate Law.



**Simple will for married couple.** Assets at H's death pass to W. Later when

W dies, assets go to heirs named in W's will or by WV Intestate Law.

This is satisfactory if both H & W have the same heirs and are in agreement as to disposition of their combined estates.



**Not as simple a will for married couple.** Assets at H's death pass to a Trust.

The Trust will designate when and how H's assets are to be distributed.

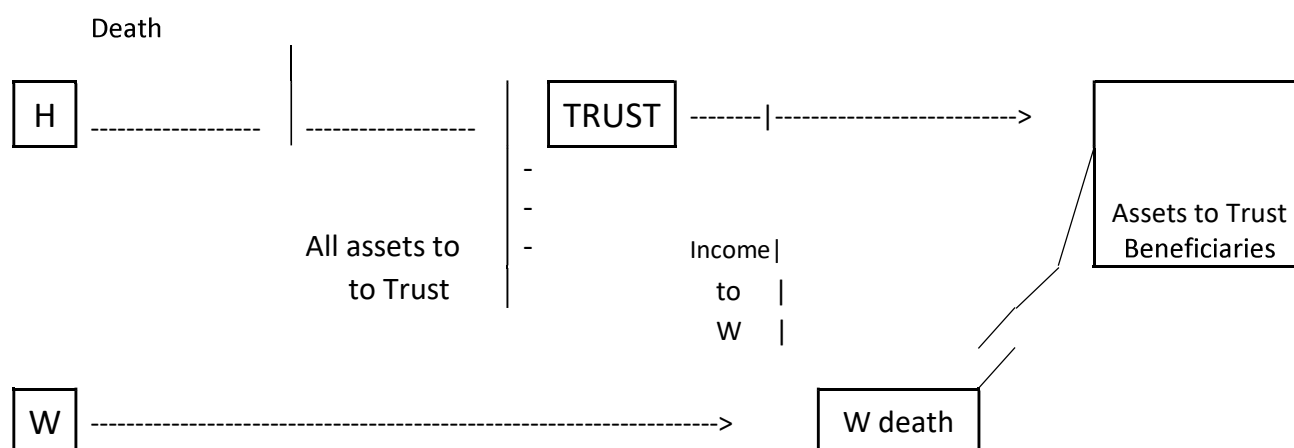
Typically the trustee will pay the trust's income to spouse and have the right to pay out principal for her "health, care & welfare".

At W's death her will can transfer assets to the trust or directly to her heirs.

Transfer to the trust will help assure some privacy regarding the transfers.

*That assumes the trust distributions are in accordance with her current wishes.*

***Will in this diagram assumes W names the joint trust as the heir.***



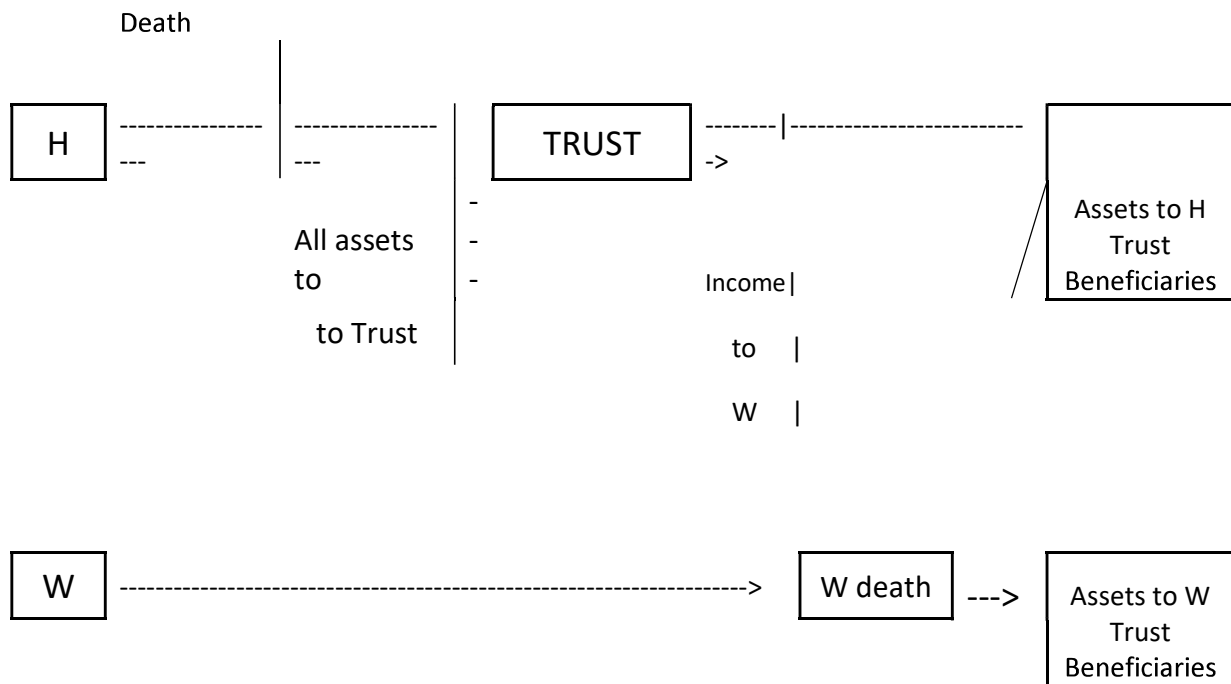
In the above scenario the trust can be used for several different purposes:

- 1) If spouse is not a good money manager the trust can be used to protect the spouse from bad spending habits
- 2) Can help assure the spouse is financially secure while protecting assets of the ultimate beneficiaries



**IF THERE ARE SEPARATE TRUSTS SET UP BY EACH SPOUSE:**

Then the trusts can be used for protection/financial aid of surviving spouse **AND** still assure disposition of the separate assets of each spouse to that spouse's heirs. This requires each spouse to set up a trust (living or testamentary)



**EXAMPLE WILL ONLY – NOT FOR USE**  
**LAST WILL AND TESTAMENT OF**  
**JOHN Q. DOE**

I, John Q. Doe, of Somewhere, West Virginia, revoke my former Wills and Codicils and declare this to be my Last Will and Testament.

**ARTICLE I**  
**IDENTIFICATION OF FAMILY**

I am married to Jane S. Jones Doe and all references in this will to “my spouse” are references to Jane S. Jones Doe.

The names of my children are Sour Doe and Cookie Doe. All references in this Will to “my children” are references to the above-named children.

**ARTICLE II**  
**PAYMENT OF DEBTS AND EXPENSES**

I direct that my just debts, funeral expenses and expenses of last illness be first paid from my estate.

**ARTICLE III**  
**DISPOSITION OF PROPERTY**

Residuary Estate.

If my spouse, Jane S. Jones Doe, survives me, all the rest, residue, and remainder of my property, of whatever nature, including property acquired after execution of this will, shall be distributed to my spouse.

If my spouse does not survive me, my residuary estate shall be distributed to the Trustee(s) under the John Q. Doe and Jane S. Jones Doe Living Trust, dated \_\_\_\_\_, 20XX.

**ARTICLE IV**  
**NOMINATION OF EXECUTOR**

I nominate \_\_\_\_\_, of Somewhere, West Virginia, and \_\_\_\_\_, of Somewhere, West Virginia, as Co-Executors (the “Executor”), without bond or security. If one of the above nominees does not serve for any reason, the remaining nominee shall serve as sole Executor without bond or security.

**ARTICLE V**  
**EXECUTOR POWERS**

My Executor, in addition to other powers and authority granted by law or necessary or appropriate for proper administration, shall have the right and power to lease, sell, mortgage, or otherwise encumber any real or personal property that may be included in my estate, without order of court and without notice to anyone.

My Executor shall have the right to administer my estate using “informal”, “unsupervised”, or “independent” probate or equivalent legislation designed to operate without unnecessary intervention by the probate court.

**ARTICLE VI**  
**MISCELLANEOUS PROVISIONS**

- A. Paragraph Titles and Gender. The titles given to the paragraphs of this Will are inserted for reference purposes only and not to be considered as forming a part of this Will in interpreting its provisions. All words used in this Will in any gender shall extend to and include all genders, and any singular words shall include the plural expression, and vice versa, specifically including “child” and “children”, when the context or facts so require, and any pronouns shall be taken to refer to the person or persons intended regardless of gender or number.
- B. Thirty Day Survival Requirement. For the purposes of determining the appropriate distributions under this Will, no person shall be deemed to have survived me unless such person is also surviving on the thirtieth day after the date of my death.
- C. Common Disaster. If my spouse and I die under circumstances such that there is no clear or convincing evidence as to the order of our deaths, or if it is difficult or impractical to determine which person survived the death of the other person, it shall, for the purpose of distribution of my life insurance, property passing under any Trust or other contracts, if any, and property passing under this Will, be conclusively presumed that I survived the death of my spouse.
- D. Liability of Fiduciary. No fiduciary who is a natural person shall, in the absence of fraudulent conduct or bad faith, be liable individually to any beneficiary of my estate, and my estate shall indemnify such natural person from any and all claims or expenses in connection with or arising out of that fiduciary’s good faith actions or nonactions of the fiduciary, except for such actions or nonactions which constitute fraudulent conduct or bad faith. No successor trustee shall be obliged to inquire into or be in any way accountable for the previous administration of the trust property.
- E. Beneficiary Disputes. If any bequest requires that the bequest be distributed between or among two or more beneficiaries, the specific items of property comprising the respective shares shall be determined by such beneficiaries if they can agree, and if not, by my Executor.

**Last Will and Testament**

**John Q, Doe**

IN WITNESS WHEREOF, I have subscribed my name below, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

We, the undersigned, hereby certify that the above instrument, which consists of \_\_\_\_\_ (\_\_\_\_) pages, including the pages(s) which contain the witness signatures, was signed in our sight and presence by John Q. Doe (the "Testator"), who declared this instrument to be his/her Last Will and Testament and we, at the Testator's request and in the Testator's sight and presence, and in the sight and presence of each other, do hereby subscribe our names as witnesses on the date shown above.

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

**AFFIDAVIT**

I, John Q. Doe, the Testator, sign my name to this instrument this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Will and that I sign it willingly, in the presence of the undersigned witnesses, that I execute it as my free and voluntary act for the purposes expressed in the Will, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator Signature: \_\_\_\_\_

John Q, Doe

STATE OF WEST VIRGINIA  
COUNTY OF \_\_\_\_\_

Subscribed, sworn to and acknowledged before me by John Q. Doe, Testator this \_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

**Last Will and Testament**  
**John Q. Doe**

We, \_\_\_\_\_ and \_\_\_\_\_  
The witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as the Testator's will and that the Testator signs it willingly in our presence, and that the Testator executes it as the Testator's free and voluntary act for the purposes expressed in the will, and that each of us, in the presence and hearing of the Testator, at the Testator's request, and in the presence of each other, hereby signs this will, on the date of the instrument, as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind and memory, and under no constraint or undue influence, and the witnesses are of adult age and otherwise competent to be witnesses.

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

STATE OF WEST VIRGINIA  
COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me by

\_\_\_\_\_ and

\_\_\_\_\_ witnesses, this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

**JOHN Q. DOE AND JANE S. JONES DOE**

**REVOCABLE LIVING TRUST** ← Grantor can change anytime

This trust agreement, made this \_\_\_\_\_, 2019, by John Q. Doe and Jane S. Jones Doe, as grantors, and \_\_\_\_\_ and \_\_\_\_\_, as Trustees:

Whereas, we wish to create a trust of certain property for the benefit of ourselves and others, and we may hereafter wish to add other property to the trust by gift, devise or bequest under the terms of our Last Wills and Testaments,

Whereas, the Trustee agrees to perform such trust in accordance with the terms and conditions and within the power and limitations hereinafter set forth in this instrument;

**Article I. GRANTORS' FAMILY**

The Grantors are married to one another. Their children are Sour Doe and Cookie Doe. Sour Doe is married to Hazel Nut Doe and their children are Sugar A. Doe and Cinnamon B. Doe. Cookie Doe is not married and is a minor (DOB: XX/XX/2014).

**Article II. GRANTORS' RIGHTS IN THE TRUST**

During the Grantors' lifetimes the Trustee shall dispose of the net income and principal of the trust in such manner as Grantors may direct from time to time. Unless otherwise directed by the Grantors, the net income shall be paid to Grantors as least quarterly.

**Article III. TRUST DIVISION UPON 2<sup>ND</sup> DEATH OF GRANTORS**

Now, therefore, the Trustee(s) agrees to hold such property and any other property acceptable to the Trustee that we or any other person or persons may add to the Trust by will or otherwise, all of which is hereinafter referred to as the "trust property", to be distributed by the Trustee(s) as soon as reasonably possible after the second death of the above named grantors in the manner described below:

**Part A**

If the total fair market value of the combined assets exceeds \$XXX,000, then the trustee shall distribute \$10,000 each to Sugar A. Doe and Cinnamon B. Doe, to be held in trust with Sour Doe and Hazel Nut Doe to be named as trustees. Property shall be distributed to the beneficiaries on their 21<sup>st</sup> birthday.

The remainder of the assets held in the trust shall be distributed as follows:

One-half to Sour Doe. If Sour Doe is deceased, then to his wife Hazel Nut Doe if they are still married and are not separated or living apart. If divorced or separated or living apart, Sour Doe's bequest shall be held in trust for the benefit of his children. \_\_\_\_\_ shall be the trustee of this minors' trust and shall distribute ½ to each of Sour Doe's children on their 21<sup>st</sup> birthday.

One-half to Cinnamon B. Doe, to be held in trust until her 21<sup>st</sup> birthday. \_\_\_\_\_ shall be named as the trustee. If Cinnamon B. Doe deceases before her age 21, this bequest shall go to a trust for Sour Doe's children to be distributed on their 21<sup>st</sup> birthday, respectively.

**JOHN Q. DOE AND JANE S. JONES DOE**  
**REVOCABLE LIVING TRUST Dated \_\_\_\_\_**

- 1) If named trustees shall resign, be removed or for any reason does not serve as Trustee of above outlined trusts then the beneficiary or guardian of the named beneficiary shall name a successor trustee.
  
- 2) No bond or other security shall be required of the Trustees hereunder.

Witness:

\_\_\_\_\_  
John Q. Doe, As Grantor

\_\_\_\_\_

\_\_\_\_\_  
Jane S. Jones Doe, As Grantor

\_\_\_\_\_

\_\_\_\_\_  
XXXXXXXXXX, As Trustee

\_\_\_\_\_

\_\_\_\_\_  
YYYYYYYYYYY, As Trustee

\_\_\_\_\_

NOTE:  
THIS TRUST DOCUMENT IS A TEACHING DISCUSSION DRAFT ONLY AND CONTAINS  
OMMISSIONS AND DRAFTING ERRORS. IT IS NOT INTENDED FOR USE.

## IS IT NECESSARY TO PREPARE A WILL?

It is important to prepare a Will to insure that your estate is transferred to those persons whom you wish to receive your property. A Will can also often aid a smooth and rapid settlement of your estate. In the event you do not prepare a Will, the law outlines the manner in which your property is to be distributed. This "intestate succession law" is illustrated by the chart on the back of this brochure.

The **Probate Estate** is the assets owned solely by the decedent at the date of death, including:

- (1) real estate or tangible personal property located in West Virginia, whether the decedent was a resident or nonresident of this State at the time of death.
  - (2) intangible personal property (such as bank accounts, stock, bonds, etc.) if the decedent resided in West Virginia, whether or not the intangible property is located in this State.
- Example:** An Ohio bank account of a West Virginia resident decedent is taxable in West Virginia.

The **Nonprobate Estate** is the assets in which the decedent had an interest, but not sole ownership, at the date of death. Included are the following assets:

- (1) any transfer intended to take effect in possession or enjoyment at or after the death of the decedent (life estate).
- (2) trusts and property payable to a beneficiary on the death of the decedent.
- (3) annuity payments, except those which receive special federal income tax treatment (qualified pension and retirement plans).
- (4) any transfer of a general power of appointment.
- (5) any property owned by the decedent as a joint tenant with right of survivorship.

For additional information, please contact:

**Internal Auditing Division**  
Revenue Center  
1001 Lee Street  
Charleston, West Virginia 25301  
Phone: (304) 558-8500

**Taxpayer Services Division**  
State Capitol Complex, West Wing, Room 417  
Charleston, WV 25305  
Phone: 304-558-3333, or  
Toll-free within West Virginia:  
1-800-WVA-TAXS (1-800-982-8297)



## WEST VIRGINIA ESTATE TAX

(for decedents  
dying after June 30, 1985)

## AND INTESTATE SUCCESSION LAW

(for decedents  
dying after June 5, 1992)

Information for specific circumstances is available from the Taxpayer Services and Internal Auditing Divisions of the West Virginia Department of Tax and Revenue, your attorney, trust officer or accountant.

**Publication — TSD-393  
Revised April, 1993**

## WHAT IS THE WEST VIRGINIA ESTATE TAX ?

The West Virginia estate tax is a death tax imposed upon the estates of resident decedents, and the estates of nonresident decedents owning real estate or tangible personal property in West Virginia who are subject to the federal estate tax. Also subject to the tax are estates of alien decedents having real estate or tangible personal property with actual situs in West Virginia and intangible personal property physically present within West Virginia.

**FILING REQUIREMENTS.** The personal representative of the estate is required to file the West Virginia estate tax return and pay any tax due within nine months after death. A copy of the federal return must accompany the West Virginia return. The filing requirement for a death in 1985 is an estate with a gross value exceeding \$400,000; in 1986, a gross value exceeding \$500,000; and in 1987 and thereafter, a gross value exceeding \$600,000.

**TAX COMPUTATION.** The West Virginia estate tax is equal to the credit for State Death Taxes computed as shown in the instructions for the federal estate return. For estates of nonresidents, the tax is apportioned. Please note that where a resident decedent's estate consists of real estate or tangible personal property with actual situs outside West Virginia, the tax is also apportioned.

**INTEREST AND ADDITIONS TO TAX.** Any tax not paid within nine months after the date of death will have interest and additions to tax added at the rates established under West Virginia law (WV Code § 11-10-18 and § 11-11-15).

**To assist your understanding of this brochure, we offer the following definitions. Please refer to this section for clarification of any word you may not fully**

**AUGMENTED ESTATE:** The sum of the net probate estate and any of the decedent's reclaimable assets, jointly held accounts, life insurance, etc. held with any person other than the surviving spouse.

**BENEFICIARY:** The person who receives property, benefits, or advantages from another whether by Will, deed or law of succession of property.

**COURT:** The County Commission, or branch thereof, in this state, which has jurisdiction in matters relating to affairs of decedents.

**DECEDENT:** A deceased person.

**DESCENDANT:** issue or offspring of a decedent.

**DEVISE:** Testamentary disposition (through a Will) of real or personal property.

**DEVISEE:** person designated to receive something in a Will

**ELECTIVE SHARE:** The surviving spouse of a decedent who dies domiciled in this state has a right of election, i.e. to claim an amount equal to the elective share percentage (determined by the length of the marriage) of the augmented estate. The surviving spouse's assets are used to help determine the proper elective share.

**ESCHEAT:** if there are no heirs, the assets of the estate pass to the State of West Virginia.

**FIDUCIARY:** A personal representative, administrator or executor of the decedent's estate or the trustee of a trust as created under the decedent's Will.

**HEIRS:** persons who are entitled to the property of a decedent under the statutes of intestate succession.

**INTESTACY:** The condition of dying without leaving a valid Will.

**INTESTATE ESTATE:** any part of a decedent's estate not effectively disposed of (devised) by a Will, which then passes to the decedent's heirs under intestate succession.

**LIFE ESTATE:** A transfer or holding of assets which is limited to the life of the owner or of some other transferee.

**PERSONAL REPRESENTATIVE:** The person or instrument nominated to be responsible for the administration of a decedent's estate.

**PROBATE:** An order of court judging a Will to be valid and ordering it to be recorded, but more broadly speaking, the entire process of admitting a Will to record, deciding questions arising in the administration of an estate and approving the accounts of an executor or an administrator. In the event there is no Will, probate refers to the process of Intestate Administration.

**PROPERTY:** The total sum of one's possessions; that which belongs to a person, whether tangible or intangible, and including exclusive and unrestricted rights.

**REPRESENTATION:** when intestate distribution is in equal shares to those equally related to the decedent.

**TESTACY:** The condition of having made and left a valid Will.

**TRANSFER:** To convey or give control of possession from one person to another.

**WILL:** A written instrument by which a person disposes of his property at his death, but which will not be effective unless executed in accordance with statutory provisions.



**DISTRIBUTION OF ASSETS THROUGH THE WEST VIRGINIA INTESTATE SUCCESSION LAW (effective 6-5-92)**

If you have no will and you are survived by:								Your assets will be distributed as follows:
Spouse	Descendants of Decedent and Surviving Spouse	Descendants of Decedent and Pre-deceased Spouse	Descendants of Decedent and Prior Relationship	Descendants of Surviving Spouse and Prior Relationship	Parents	Descendants of Parents	Grandparents or Descendants	
<b>X</b>								100% to surviving spouse
<b>X</b>	<b>X</b>							100% to surviving spouse
<b>X</b>					<b>X</b>			75% to surviving spouse 25% to parents
<b>X</b>				<b>X</b>	<b>X</b>			75% to surviving spouse 25% to parents 0% to descendants of surviving spouse
<b>X</b>	<b>X</b>			<b>X</b>				60% to surviving spouse 40% to descendants of decedent, by representation* 0% to descendants of surviving spouse
<b>X</b>			<b>X</b>					50% to surviving spouse 50% to descendants of decedent, by representation
<b>X</b>	<b>X</b>				<b>X</b>			100% to surviving spouse
<b>X</b>	<b>X</b>		<b>X</b>	<b>X</b>	<b>X</b>			50% to surviving spouse 25% to descendants of decedent and surviving spouse, by representation 25% to descendants of decedent from prior relationship, by representation 0% to descendants of surviving spouse from prior relationship 0% to parents
		<b>X</b>						100% to descendants of decedent and pre-deceased spouse, by representation
		<b>X</b>	<b>X</b>					50% to descendants of decedent and pre-deceased spouse, by representation 50% to descendants of decedent and prior relationship, by representation
					<b>X</b>			100% to parents
						<b>X</b>		100% to descendants of parents, by representation
							<b>X</b>	50% to surviving maternal grandparents, or descendants of maternal grandparents by representation if neither maternal grandparent survives 50% to surviving paternal grandparents, or descendants of paternal grandparents by representation if neither paternal grandparent survives If either set of grandparents, and all descendants thereof, are deceased, then 100% to surviving set of grandparents, or descendants by representation.

**NOTES**

1. Dower is abolished.
2. Transfers by an individual who dies intestate will be treated as an advancement only if declared in a contemporaneous writing.
3. Relatives of half-blood inherit the same share as if they were whole-blood.
4. An individual who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent.

\* First-generation descendants of decedent would share equally in the estate. If decedent is predeceased by one or more first-generation descendants, their share(s) are combined and then divided equally among the second-generation descendants.  
If the maternal grandparents and the paternal grandparents are all deceased and leave no surviving descendants, the entire estate passes to the State of West Virginia.

## What are the steps in probate? [top](#)

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Note: This Information is Very General. The probate process may vary from county to county. The Process may be different from the process described below.

Step	Explanation
<b>1. Contact the County Clerk's Office to Start Probate Process</b>	Take the will (if there is one) to the county commissioner's office and present it to the county clerk. If there is not a will, you should take the death certificate.
<b>2. Appoint an Administrator/Executor</b>	<p>If an executor is appointed in the will, then that person is sworn in before the county clerk.</p> <p>If no executor is appointed in the will, then the person's heirs and anyone receiving gifts from the person's estate can apply at the county commissioner's office to be appointed as executor. Whoever is appointed is sworn in before the county clerk.</p> <p>If there is no will, then the person's heirs apply at the county commissioner's office to be appointed as administrator. The law gives the surviving spouse preference in this process, but any heir can apply. Whoever is appointed is sworn in before the county clerk.</p> <p>Form is filed, listing all of the person's heirs and anyone receiving a gift under the person's will.</p>
<b>3. Appraise the Person's Estate</b>	<p>The administrator/executor files an Appraisal of the Estate, listing all of the person's probate property and its value. The administrator/executor also files a Nonprobate Inventory, which lists all of the nonprobate property and its value.</p> <p>The requirements for the Appraisal are listed at W. Va. Code § 44-1-14. The requirements for the Nonprobate Inventory are listed at W. Va. Code § 11-11-7.</p>
<b>4. Settle any Claims Against the Estate from Creditors</b>	After the administrator/executor files an Appraisal and a Nonprobate Inventory, the county clerk publishes a Notice of Administration of the Estate. The person's creditors have 60 days to file a claim against the person's estate, alleging that the

	<p>person owes them money. The administrator or executor can challenge any claims. The administrator/executor pays any and all claims against the person's estate for debts and pays any taxes due. This includes any funeral expenses.</p> <p>The administrator/executor must sell off the person's property if the person does not have enough money on hand to pay all of the debts and taxes. This is often done by an estate sale. In addition, the administrator/executor must use the money raised by the sale of the person's property to pay debts and taxes in the order listed in W. Va. Code § 44-2-21.</p> <p>This is very important. The probate process cannot go any further until all of the claims and taxes are paid.</p>
<p><b>5. Close the Estate</b></p>	<p>Once all of the person's debts and taxes are paid, then the administrator/executor can finish the probate process. This can be done in two ways.</p> <p>The first way is filing a Final Settlement. This lists all of the person's property, the payments made for debts and taxes, any gifts made from the person's property according to a will, any gifts made from the person's property to the person's heirs. It includes the receipts from any costs incurred in the probate process.</p> <p>The second way to close the estate is to file a Waiver of Final Settlement, which states that no unpaid debts or taxes remain and everyone who is owed a gift from the person's property has been told what they are getting.</p> <p>The fiduciary commissioner or fiduciary supervisor will sign off on the Final Settlement or Waiver of Final Settlement and issue an order closing the estate. From this point on, no one can contest the will or the probate process.</p>
<p><b>6. Distribute the Remaining Property</b></p>	<p>Once the estate is closed, the administrator/executor gives away the person's remaining property to the people mentioned in the will or the person's heirs, if there is no will.</p>

**FORM ET 6.01**

Rev. 06/14

**APPRAISEMENT OF THE ESTATE  
FOR DECEDENTS DYING ON OR AFTER JULY 13, 2001**

**PART 1: GENERAL INFORMATION QUESTIONNAIRE**

A. Decedent's Name		B. Social Security Number	C. Date of Death
D. Decedent's Residence at Death		E. State	F. County
G. Marital Status at Death Married <input type="checkbox"/> Single, Widow(er) or Divorced <input type="checkbox"/>	Name of Surviving Spouse	H. West Virginia Counties Where Decedent Held Real Estate.	
I. Will this estate be required to file a Federal Estate Tax Return <b>FORM 706</b> (see instructions on page 2)?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
J. Will this estate be required to file the <b>Nonprobate Inventory Form ET 6.02</b> (see instructions on page 3)?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
K. Did the Decedent leave a <b>WILL</b> ?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
L. Fiduciary's Name and Mailing Address (include zip code)  _____ _____ _____ _____		M. Preparer's Name and Address  _____ _____ _____ _____	CPA <input type="checkbox"/> Attorney <input type="checkbox"/>
Fiduciary's Phone Number:		Preparer's Phone Number:	

**PART 2: QUESTIONNAIRE OF NONPROBATE REAL ESTATE**

Answer each of the following questions concerning the decedent's interest in NONPROBATE REAL ESTATE.

**If you answer "YES" to any question below, you must complete the attached Inventory of Nonprobate Real Estate provided with this form which shows:**

- a. the type of transfer(s) with reference to the question number below;
- b. name(s) of the person(s) with an interest in the real estate as joint tenant or transferee;
- c. relationship to the decedent of ALL above named persons;
- d. market value at the date of death; and
- e. description of the real estate including assessed value.

	<b>MARKET VALUE</b>	
1. Did the decedent own an interest in any real estate as joint tenant with right of survivorship?.....YES <input type="checkbox"/> NO <input type="checkbox"/>	1	0
2. Did the decedent transfer an interest in any real estate without adequate consideration within three years prior to date of death?.....YES <input type="checkbox"/> NO <input type="checkbox"/>	2	0
3. Did the decedent own an interest in any real estate in an inter vivos trust (living trust) arrangement or in which the decedent retained the right of use and enjoyment?.....YES <input type="checkbox"/> NO <input type="checkbox"/>	3	0
4. Did the decedent own an interest in any real estate in which the decedent retained a power of appointment, whether special or general?.....YES <input type="checkbox"/> NO <input type="checkbox"/>	4	0
5. Did the decedent own an interest in any real estate as a life estate including a dower interest?.....YES <input type="checkbox"/> NO <input type="checkbox"/>	5	0
6. Did the decedent own an interest in any real estate transferable by a transfer on death deed?.....YES <input type="checkbox"/> NO <input type="checkbox"/>	6	0
7. <b>TOTAL VALUE OF NONPROBATE REAL ESTATE</b> (add lines 1 through 6 above).....	7	0

**PART 3: SUMMARY OF PROBATE ASSETS**

Complete PART 4 first. Enter the total from each schedule of PART 4 on the appropriate line below.

	<b>MARKET VALUE</b>	
1. Schedule A: Real estate or any interest therein.....	1	0
2. Schedule B: Tangible personal property of every kind.....	2	0
3. Schedule C: Government bonds and securities of every kind.....	3	0
4. Schedule D: Shares of corporate stock of every kind.....	4	0
5. Schedule E: Money, certificates of deposit, notes, accounts, etc. ....	5	0
6. Schedule F: All other assets not hereinbefore mentioned.....	6	0
7. <b>TOTAL VALUE OF PROBATE ASSETS</b> (add lines 1 through 6 above).....	7	0

**PART 4: INVENTORY OF PROBATE ASSETS – TRANSFERS BY WILL OR INTESTACY**

After completing PART 4, enter the total from each schedule on the appropriate line in PART 3.

<b>SCHEDULE A:</b> Describe any real estate or any interest in real estate. Include description and appraised value of out of state property, but do not include this amount in the total. See page 3 of the instructions.	<b>ASSESSED VALUE</b>	<b>APPRAISED VALUE</b>
<b>TOTAL</b> (enter the total appraised value on line 1 of PART 3)		

<b>SCHEDULE B:</b> Tangible personal property of every kind. See page 3 of the instructions.	<b>APPRAISED VALUE</b>
<b>TOTAL</b> (enter the total appraised value on line 2 of PART 3)	

<b>SCHEDULE C:</b> Bonds and securities of every kind. See page 3 of the instructions.	<b>APPRAISED VALUE</b>
<b>TOTAL</b> (enter the total appraised value on line 3 of PART 3)	

**PART 4** (continued)

<b>SCHEDULE D:</b> Corporate stock of any kind. See page 3 of the instructions.				
<b>NAME OF THE COMPANY</b>	<b>CLOSELY HELD</b>	<b>NUMBER OF SHARES</b>	<b>MARKET VALUE PER SHARE</b>	<b>TOTAL MARKET VALUE</b>
	<input type="checkbox"/>			0
	<input type="checkbox"/>			0
	<input type="checkbox"/>			0
	<input type="checkbox"/>			0
	<input type="checkbox"/>			0
	<input type="checkbox"/>			0
	<input type="checkbox"/>			0
	<input type="checkbox"/>			0
<b>TOTAL</b> (enter the total market value on line 4 of PART 3)				0

<b>SCHEDULE E:</b> Money, bank accounts, certificates of deposits, notes, accounts receivable, etc. Show dates of notes. See page 3 of instructions.	<b>APPRAISED VALUE</b>
<b>TOTAL</b> (enter the total appraised value on line 5 of PART 3)	

<b>SCHEDULE F:</b> All other assets, not hereinbefore mentioned, including insurance payable to the estate. See page 3 of the instructions.	<b>APPRAISED VALUE</b>
<b>TOTAL</b> (enter the total appraised value on line 6 of PART 3)	

**PART 5: BENEFICIARIES.** List the names and relationships of all beneficiaries or heirs of the estate. Show the age of any life tenant after their name. See page 3 of the instructions.

BENEFICIARY OR HEIR	RELATIONSHIP	BENEFICIARY OR HEIR	RELATIONSHIP

**PART 6: OATH OF FIDUCIARY**

State of \_\_\_\_\_ County of \_\_\_\_\_, To-wit:

I, \_\_\_\_\_, fiduciary for the estate of \_\_\_\_\_ after diligent effort to ascertain the taxable property of this estate, have made answers to each of the questions and have completed, in detail, the schedules for each category of property and believe each item thereof to be correct. I thereby believe the foregoing to be the true and lawful appraisal of ALL real estate and probate property of the estate of the above named decedent.

\_\_\_\_\_

Fiduciary

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_

Notary Public

My Commission expires \_\_\_\_\_, 20\_\_\_\_\_

**PART 7: APPROVAL OF FIDUCIARY COMMISSIONER/FIDUCIARY SUPERVISOR**

I, \_\_\_\_\_, Fiduciary Commissioner/Fiduciary Supervisor of \_\_\_\_\_ County, West Virginia, to whom the estate of the above named decedent was referred, do hereby approve the foregoing appraisal of such estate.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_ By \_\_\_\_\_

Fiduciary Commissioner/Fiduciary Supervisor Deputy

**PART 8: CLERK OF THE COUNTY COMMISSION**

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, To-wit:

In the Clerk's office of \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the forgoing appraisal of the above named decedent was presented and upon motion admitted to record.

Attest \_\_\_\_\_, Clerk

By \_\_\_\_\_, Deputy

Decedent's Name: \_\_\_\_\_

**INVENTORY OF NONPROBATE REAL ESTATE**

If you answered "YES" to any question under PART 2: QUESTIONNAIRE OF NONPROBATE REAL ESTATE, show the following on this page:

- a. the type of transfer(s) with reference to the question number in PART 2;
- b. name(s) of the person(s) with an interest in the real estate as joint tenant or transferee;
- c. relationship to the decedent of ALL above named persons;
- d. market value at the date of death; and
- e. description of the real estate including assessed value.



**NONPROBATE INVENTORY OF THE ESTATE  
FOR DECEDENTS DYING ON OR AFTER JULY 13, 2001**

**PART 1: GENERAL INFORMATION QUESTIONNAIRE**

A. Decedent's Name	B. Social Security Number	C. Date of Death
D. Decedent's Residence at Death	E. State	F. County
G. Marital Status at Death Married <input type="checkbox"/> Name of Surviving Spouse _____ Single, Widow(er) or Divorced <input type="checkbox"/>		
H. Fiduciary's Name and Mailing Address (include zip code) _____ _____ _____	I. Preparer's Name and Address CPA <input type="checkbox"/> Attorney <input type="checkbox"/> _____ _____ _____	
Fiduciary's Phone Number:	Preparer's Phone Number:	

**PART 2: QUESTIONNAIRE OF NONPROBATE PERSONAL PROPERTY**

Answer each of the following questions concerning the decedent's interest in NONPROBATE PERSONAL PROPERTY. Nonprobate personal property means all property which does not pass by operation of the decedent's will or by the laws of intestate descent and distribution or is otherwise not subject to administration in a decedent's estate.

Note: All real estate and probate property are to be reported on the Appraisal of the Estate (ET 6.01) filed with the County Commission.

**If you answer "YES" to any question below, you must complete PART 3 of this form which shows:**

- a. the type of transfer(s) with reference to the question number below;
- b. name(s) of the person(s) with an interest in the property as joint tenant or transferee;
- c. relationship to the decedent of ALL above named persons;
- d. market value at the death; and
- e. description of the property.

		MARKET VALUE	
1. Did the decedent possess any powers of appointment?.....	YES <input type="checkbox"/> NO <input type="checkbox"/>	1	0
2. Did the decedent make any gifts or transfers without adequate consideration within three years prior to the date of death?.....	YES <input type="checkbox"/> NO <input type="checkbox"/>	2	0
3. Did the decedent make any transfers in Trust which passed to others upon his death?.....	YES <input type="checkbox"/> NO <input type="checkbox"/>	3	0
4. Did the decedent own any stock, bonds, bank accounts, certificates of deposit or other personal property as a joint tenant with the right of survivorship?.....	YES <input type="checkbox"/> NO <input type="checkbox"/>	4	0
5. Did the decedent own any life insurance policies to named beneficiaries?.....	YES <input type="checkbox"/> NO <input type="checkbox"/>	5	0
6. Did the decedent own any annuities?.....	YES <input type="checkbox"/> NO <input type="checkbox"/>	6	0
7. Did the decedent own an interest in any personal property as a life tenant?.....	YES <input type="checkbox"/> NO <input type="checkbox"/>	7	0
8. Did the decedent own any personal property which was payable on death to others?.....	YES <input type="checkbox"/> NO <input type="checkbox"/>	8	0
9. Did the decedent file any Federal Gift Tax Returns with the IRS or make any taxable gifts under Federal Gift Tax law or regulations?.....	YES <input type="checkbox"/> NO <input type="checkbox"/>	9	0
10. Did the decedent own any other nonprobate personal property includible in the federal gross estate of a decedent?.....	YES <input type="checkbox"/> NO <input type="checkbox"/>	10	0
<b>11. TOTAL VALUE OF NONPROBATE PERSONAL PROPERTY (add lines 1 through 10 above).....</b>		<b>11</b>	<b>0</b>

**PART 3: INVENTORY OF NONPROBATE PERSONAL PROPERTY (attach additional sheets if needed)**

- a. the type of transfer(s) with reference to the question number in PART 2;
- b. name(s) of the person(s) with an interest in the property as joint tenant or transferee;
- c. relationship to the decedent of ALL above named persons;
- d. market value at the date of death; and
- e. description of the property.

Question No.	DESCRIPTION OF PROPERTY AND TRANSFER	MARKET VALUE
<b>TOTAL VALUE OF NONPROBATE PERSONAL PROPERTY</b> (this total must equal total of line 11 on PART 2)		

**PART 4: OATH OF FIDUCIARY**

State of \_\_\_\_\_

County of \_\_\_\_\_, To-wit:

I, \_\_\_\_\_, fiduciary for the estate of \_\_\_\_\_, after diligent effort to ascertain the taxable property of this estate, have made answers to each of the questions and have completed, in detail, the list for each category of property and believe each item thereof to be correct. I thereby believe the foregoing to be the true and lawful inventory of ALL nonprobate personal property of the estate of the above named decedent.

\_\_\_\_\_

Fiduciary

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

Notary Public

My Commission expires \_\_\_\_\_, 20\_\_\_\_