

# Pour Over Will

A Pour Over Will is a legal document that is used in conjunction with a trust. It directs that any assets not already placed in the trust at the time of the testator's death be transferred (or "poured over") into the trust.

Common uses for a Pour Over Will include:

1. **Transferring Unaccounted Assets:** A Pour Over Will ensures that any assets not explicitly included in a trust are 'poured over' into the trust upon the testator's death. This can include assets acquired late in life or unintentionally left out of the trust.
2. **Guardianship:** Outline plan for backup guardians, along with sufficient funds from your estate to assist in the children's upbringing.
3. **Personal Belongings:** A Pour Over Will can be used to manage smaller personal possessions not included in a trust, such as furniture, clothing, and jewelry.

# Pour Over Will Instructions for John Smith

## **Review your Pour Over Will**

- Confirm that the decisions made and the people named are accurate and representative of your wishes
- Make any changes needed on your account ()

## **Print and execute your Pour Over Will**

- Note: Print and execute your Revocable Trust before executing this Pour Over Will.
- Fill in the date of execution for your Revocable Trust in Article 3, Paragraph B of this Pour Over Will
- Find a notary public and two witnesses to be present when you sign the document (bring an ID!) Witnesses need to be at least 18 years of age and should not be named in the Will as beneficiaries of your estate or in any other role
- Sign and date the document where indicated
- Have witnesses sign underneath and fill in their information

## **Sign the 'Self-Proving Affidavit' at the end of this document**

- Have witnesses sign the "Self-Proving Affidavit"
- Have the notary public sign and "acknowledge" the document

# Last Will & Testament of John Smith

I, JOHN SMITH, of the STATE OF OKLAHOMA, make this my last will and testament (hereinafter my "Will"), and I revoke all wills and codicils previously made by me.

## Article 1 – Identification

- A. **Spouse.** My Spouse's name is Jane Smith. All references in this Will to "Spouse" are to Jane Smith.
- B. **Children.** I have two children, Julie Smith and Alan Smith. All references in this Will to "my children" are to them and to all children hereafter born to or adopted by me. In addition, all references in this Will to "my Descendants" are to my children (as defined above) and to all of their respective Descendants.
- C. **Pets.** I have one pet, Frisco (Goldendoodle). All references in this Will to "my pets" are to them and to all pets hereafter owned by me.

## Article 2 – Final Arrangements

- A. **Final Resting Place.** Regarding my body and final resting place, I authorize my Executor named in this Will to determine the appropriate disposition of my remains in my Executor's sole discretion.
- B. **Ceremony.** Regarding my end of life ceremony, I authorize my Executor named in this Will to determine the appropriate ceremony or memorial in my Executor's sole discretion.

## Article 3 – Gifts at Death

- A. **Memorandum.** I may leave a writing disposing of some or all my tangible personal property. I request that my wishes, as expressed in that writing, be followed. This provision shall apply whether the writing is executed before or after this Will. If no such writing is found by my Executor within thirty (30) days of the admission of my Will to probate, it shall be conclusively presumed that no such writing exists and I direct that such tangible personal property be distributed in accordance with the remaining provisions of this Will.
- B. **Residue.** The residue of my estate is all the property remaining in my estate after the gifts under Paragraph A of this Article are satisfied and is referred to through my Will as the "Residue". I give the Residue to the trustee (the "Trustee") of the trust created by that certain trust instrument dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, entered into by me as Settlor and as Trustee and as may be amended or restated in the future from time to time during my

lifetime (known as the "John Smith 2024 Revocable Living Trust" and sometimes hereinafter referred to as the "Trust Agreement"), to be added to the principal of the trust created under the Trust Agreement and administered in accordance with the terms of the Trust Agreement.

## Article 4 – Executor Provisions

- A. **Executor.** I nominate my Spouse, Jane Smith, to be Executor of my Will and estate. If they fail to qualify, dies, resigns, becomes Incapacitated, or otherwise ceases to serve, I nominate my relative, Bill Smith to be Executor of my Will and estate.
- B. **Expenses and Compensation.** Every Executor shall be reimbursed for the reasonable costs and expenses incurred in connection with such Executor's duties. Every Executor shall be entitled to fair and reasonable compensation for services rendered by such Executor in an amount not exceeding the customary and prevailing charges for services of a similar character at the time and place such services are performed. Additionally, every Executor shall be entitled to additional fair and reasonable compensation for extraordinary services performed by such Executor in an amount equal to the prevailing charges for services of a similar character at the time and place such extraordinary services are performed.
- C. **Reliance on Legal Opinion.** In acting or declining to act, each Executor may rely upon the written opinion of a competent attorney licensed and in good standing in the jurisdiction where the subject matter of any opinion is sought, any facts stated in any instrument, furnished in writing and believed to be true, or any other evidence such Executor deems sufficient. Each Executor shall be indemnified and further held harmless from any liability for any action taken, or for the failure to take any action, if done in good faith and without gross negligence.
- D. **Ancillary Executors.** If my estate contains property located in another state or a foreign jurisdiction and my Executor cannot or chooses not to serve under the laws thereof, my Executor shall have the power to nominate an ancillary individual or corporate executor of such property.
- E. **Acts of Prior Executors.** Each Executor shall be relieved of any duty to examine the acts of any prior Executor and no court accounting shall be required. Each successor Executor shall be responsible only for properties that are actually delivered to such Executor.
- F. **Multiple Executors.** Except as otherwise specifically provided in this Will, if two or more Executors are named or serving hereunder and any one or more, but not all, decline, fail, or cease to serve for any reason, and no successor Executor is named herein, then the remaining Executor or Co-Executors, as the case may be, shall be nominated or continue to serve in such capacity.
- G. **Actions by Executors.** Unless otherwise specifically indicated: (1) actions authorized throughout this Will in the discretion of my Executor shall mean the

reasonable discretion of such Executor; and (2) in all matters relating to my estate, if the number of Executors authorized to exercise a power or discretion shall be greater than one, the decision of a majority of the Executors then serving shall control. Any writing signed by the persons whose decisions shall control shall be valid and effective for all purposes as if signed by all such Executors.

## **Article 5 – Guardian Provisions**

I nominate my relative, Jill Smith to be guardian of the person and estates of those of my children who are under the age of legal majority at the time of my death, without the requirement of bond or other security. If this person dies, does not qualify, fails to serve, ceases to serve, or is unwilling or unable to serve for any reason, I nominate my relative, Bill Smith, to be the first alternate guardian of the persons and estates of those of my children who are under the age of legal majority at the time of my death, without requirement of bond or other security. The provisions of this Article are intended to apply if the need to nominate a guardian arises following my death.

## **Article 6 – Executor Powers**

- A. **Powers.** Each Executor shall, to the extent permitted by law, act independently and free from the control of any court as to my estate (and as to all of the property of my estate). Each Executor shall have and possess all powers and authorities conferred by statute or common-law in any jurisdiction in which such Executor may act, including all powers and authorities conferred by the Oklahoma Statutes Title 58, and by any future amendments thereto, except for any instance in which such powers and authorities may conflict with the express provisions of this Will, in which case the express provisions of this Will shall control.

## **Article 7 – Administrative Provisions**

- A. **Survivorship Provisions.** No person except my Spouse shall be deemed to have survived me if such person shall die within thirty (30) days after my death. Any person who is prohibited by law from inheriting property from me shall be treated as having failed to survive me.
- B. **Payment of Taxes and Expenses.** All funeral expenses and all expenses incurred in connection with the administration of my estate shall be paid out of the Residue (or, if the Residue is insufficient to pay such expenses, by the Trustee under the Trust Agreement described in Article 3 in the manner described in the Trust Agreement). Apportionment of any estate and inheritance taxes or generation-skipping transfer taxes (including interest and penalties thereon) assessed under the provisions of any tax law against any assets of my estate, shall be made in accordance with the provisions of the Trust Agreement described in Article 3.

## Article 8 – Miscellaneous Provisions

- A. **Spendthrift Provisions.** Prior to the actual receipt of property by any beneficiary, no property (income or principal) distributable under this Will shall, voluntarily or involuntarily, be subject to anticipation or assignment by any beneficiary, or to attachment by or to the interference or control of any creditor or assignee of any beneficiary, or taken or reached by any legal or equitable process in satisfaction of any debt or liability of any beneficiary, and any attempted transfer or encumbrance of any interest in such property by any beneficiary hereunder prior to distribution shall be void.
- B. **Savings Clause.** For the purposes of this Will, either gender shall be interpreted as encompassing the other gender, and the singular shall encompass the plural and vice versa as the meaning shall dictate.
- C. **Severability.** If any clause or term of this Will is held to be unenforceable or invalid as a matter of law, all other provisions of this Will shall remain in effect to the fullest extent permissible under the governing law of this Will.

## Article 9 – Defined Terms

- A. **Defined Terms.** References in this Will to the following capitalized terms have the meanings specified below in this Article:
  - 1. **Code.** References to the Code, various Sections of the Code, or to 26 U.S.C. followed by Section numbers, are to such designated Sections of the Internal Revenue Code of 1986 as amended.
  - 2. **Executor.** Unless another meaning is clearly indicated or required by context or circumstances, the term shall mean and include all persons or entities that may at any time be serving, including but not limited to the initial or Executors (including all co-Executors), and any acting alternate or successor Executor.
  - 3. **Heirs.** References to Heirs are to those persons who would inherit separate personal property from the person designated under the statutes of descent and distribution of the State of Oklahoma, if such person died intestate and unmarried (and not in a registered domestic partnership) at such time. A distribution to Heirs is a distribution in the shares and manner prescribed under such statutes.
  - 4. **Incapacitated.** A beneficiary shall be deemed Incapacitated if my Executor, in my Executor's discretion, determines that such beneficiary lacks the ability, due to a physical or mental condition, to manage his or her own personal and financial affairs. My Executor shall be deemed Incapacitated if and for as long as: (1) a court of competent jurisdiction has made a finding to that effect; (2) a guardian or conservator of such Executor's person or estate has been appointed by a court of competent jurisdiction and is serving as

such; or (3) two physicians (licensed to practice medicine in the state where my Executor is domiciled at the time of the certification, and one of whom shall be board certified in the specialty most closely associated with the cause of my Executor's incapacity) certify that due to a physical or mental condition my Executor lacks the ability to manage his or her own personal and financial affairs. An Incapacitated Executor shall be deemed to have regained capacity if there is a finding to that effect by a court of competent jurisdiction or if two physicians (with the same qualifications described above) certify that the Executor is capable of managing his or her personal and financial affairs.

5. **Descendants.** Except as otherwise provided in this Will, references to Descendants shall mean the lineal blood descendants of any degree of the ancestor designated; provided, however, that such references shall include as then living Descendants, with respect to any provision of this Will, Descendants who have been conceived at any specific point in time relevant to such provision and who thereafter survive birth.

The term "Descendants" shall include a person conceived through assistive reproductive techniques or procedures, unless: (i) the person was born to an individual who was acting solely as a surrogate on behalf of another individual and did not intend to treat the person as their child, or (ii) the person was born to an individual who acted solely as the donor of genetic material on behalf of another individual and did not intend to treat the person as their child.

Except as hereinafter provided in this Paragraph, an adopted child and such adopted child's Descendants by blood or adoption shall be considered under this Will to be Descendants of the adopting parent or parents and of anyone who is by blood or adoption a lineal ancestor of the adopting parent or of either of the adopting parents.

Notwithstanding any provision in this Will to the contrary, the following persons shall not be included in the definition of Descendants for any purposes hereunder: (i) any person who is adopted (by anyone other than me) after reaching age eighteen (18) and (ii) any person who would otherwise be considered the Descendants (whether by blood or adoption) of such person.

6. **Per Stirpes.** When a distribution is to be made to a person's Descendants Per Stirpes property shall be divided into as many equal shares as there are (a) members of the nearest generation of Descendants who survive such person, and (b) deceased members of that generation who left Descendants who survive such person. This division into shares shall begin at the generation nearest to such person that has a surviving member. Each surviving member of the nearest generation of Descendants with a member

who survives such person shall receive one share, and the share that would have passed to each deceased member of that generation who left Descendants who survive such person shall be divided in a similar manner (by reapplying the preceding rule) among their Descendants who survive such person. For example, if a person has deceased children and surviving children when a distribution is to be made, the assets will be divided into equal shares at the child level and distributed Per Stirpes below that level; however, if the person has no surviving children at such time, that equal division will be made at the grandchild level (or lower, if appropriate) and distributed Per Stirpes below that level. This definition is intended to override any conflicting or contrary statutory or common law definition.

- B. **Other Defined Terms.** Other terms may be defined throughout this Will for purposes of the provision in which they are included and those definitions apply to those terms in the context in which they are defined despite not being included in this Article.

IN WITNESS WHEREOF, I have signed this Will on the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
John Smith, Testator

\_\_\_\_\_  
Date



The foregoing instrument was signed by the Testator in our presence and declared by the Testator to be the Testator's Will, and we, the undersigned witnesses, sign our names hereunto as witnesses at the request and in the presence of the Testator on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

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

\_\_\_\_\_  
Witness Printed Name

\_\_\_\_\_  
Witness Printed Name

\_\_\_\_\_  
Witness Address

\_\_\_\_\_  
Witness Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# Self-Proving Affidavit

STATE OF OKLAHOMA

COUNTY OF \_\_\_\_\_

I, John Smith, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, 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 (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
John Smith, Testator

We, \_\_\_\_\_ and \_\_\_\_\_, sign our names to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as their Will and that they sign it willingly (or willingly direct another to sign for them), and that each of us, in the presence and hearing of the Testator, hereby signs this Will as witness to the Testator's signing, and that to the best of our knowledge the Testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

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

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

\_\_\_\_\_  
Witness Address

\_\_\_\_\_  
Witness Address

STATE OF OKLAHOMA

COUNTY OF \_\_\_\_\_

SUBSCRIBED, sworn to and acknowledged before me by the Testator, John Smith, and  
subscribed before me by the witnesses, \_\_\_\_\_ and  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, by John Smith.

(SEAL)

\_\_\_\_\_  
Notary Public: State of Oklahoma

\_\_\_\_\_  
My commission expires