

# South Dakota Last Will and Testament

I, \_\_\_\_\_ (hereinafter referred to as "the Testator"), with a place of residence at \_\_\_\_\_, **South Dakota**, \_\_\_\_\_, being of sound mind and not acting under duress or undue influence while fully understanding the nature and extent of all my property (hereinafter referred to as "the Estate") and of this disposition thereof, do hereby make, publish, and declare this document to be my Last Will and Testament, and hereby revoke any and all other wills and codicils heretofore made by me.

## 1. FAMILY IDENTIFICATION

I am married to \_\_\_\_\_.

They \_\_\_\_\_ (will/will not) be a Beneficiary of the Estate as described in **Section 4**.

Children:

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My child(ren) \_\_\_\_\_ (will/will not) be included as heir(s) in this Last Will and Testament.

## 2. PERSONAL REPRESENTATIVE

I nominate and appoint \_\_\_\_\_, with a mailing address of \_\_\_\_\_, as the Personal Representative of my Estate and I request that they be appointed temporary Personal Representative if they apply. In the event my above-named Personal Representative is not able to serve, I nominate the following Second (2nd) Personal Representative: \_\_\_\_\_, with a mailing address of \_\_\_\_\_.

### 3. EXPENSES & TAXES

I direct that all my debts and end-of-life treatment, funeral, and burial expenses be paid as soon after my death as may be reasonably convenient, and I hereby authorize my Personal Representative, hereinafter appointed, to settle and discharge any claims made against my Estate in his or her absolute discretion. I further direct that my Personal Representative shall pay any and all Estate and inheritance taxes payable by reason of my death in respect of all items included in the computation of such taxes, whether passing under this Will or otherwise, out of my Estate. Said taxes shall be paid by my Personal Representative as if such taxes were my debts without recovery of any part of such tax payments from anyone who receives any item included in such computation.

### 4. DISPOSITION OF PROPERTY

I devise and bequeath my property, both real and personal and wherever situated (including any life insurance policies I may have), to the following Beneficiaries:

\_\_\_\_\_, who is my \_\_\_\_\_  
and is entitled to \_\_\_\_% of my entire Estate.

\_\_\_\_\_, who is my \_\_\_\_\_  
and is entitled to \_\_\_\_% of my entire Estate.

\_\_\_\_\_, who is my \_\_\_\_\_  
and is entitled to \_\_\_\_% of my entire Estate.

\_\_\_\_\_, who is my \_\_\_\_\_  
and is entitled to \_\_\_\_% of my entire Estate.

## **TRUST CREATION**

I direct a Trust to be created for all the Beneficiaries of this Last Will and Testament that are under the age of \_\_\_\_\_ years. The Beneficiaries of this Trust shall receive the same share value of the Estate (in accordance with the percentage stated in **Section 4**) and shall be treated as the other Beneficiaries in regards to all matters including but not limited to: life insurance policies, share dividends, employment pensions, real estate, bank account balances and any other valuable assets left.

Until each Beneficiary has reached the age of \_\_\_\_\_ years, there shall be an individual known as \_\_\_\_\_ (hereinafter known as "the Trustee"), with a mailing address of \_\_\_\_\_, that shall be serving with bond and will have powers to deduct funds from the Beneficiary's Residual Estate for the benefit of their medical, educational, or other needs deemed necessary to the Beneficiary and in their best interest. Any payments made for a specific Beneficiary shall be reflected in the final balance calculated when they reach the age allowed for disbursement(s). At the time the Beneficiary reaches the age of \_\_\_\_\_ years, the Trustee shall hand over the bequeathed funds, assets, and any other personal and real property to the said Beneficiary.

### **A. Trustee's Handling of Funds**

If the Trustee deems that the child under the age of \_\_\_\_\_ years is not qualified to handle monetary funds for medical, educational, or other needs deemed necessary and in their best interest, the Trustee may make payments to individuals including but not limited to guardians, conservators, parents, or any other qualified persons acting as caretakers of the child in accordance with the Uniform Transfers to Minors Act (UTMA). The Trustee will have the rights to buy, sell, or exchange any property that is in the portion of the child's inherited Estate if that is deemed to be in their best interest. The Trustee is specifically authorized to make loans without interest to any Beneficiary hereunder. The Trustee shall have the right to deduct any sums of money

deemed to be necessary for the everyday wellbeing of the child from their share of the inherited Estate.

### **B. Trustee's Right to Resign**

The Trustee has the right to resign from their position at any time by providing at least \_\_\_\_\_ days' written notice to all current Beneficiaries, children, guardians, parents, conservators, or other interested parties of the Trust.

### **C. Appointment of Replacement Trustee**

If the Trustee or the Second Trustee are unable to conduct their duties due to either their resignation, incapacitation, or any other reason that impairs their ability to perform at their position, then a new Trustee may be appointed by the current or previous Trustee, or - if the current or previous Trustee is not able to appoint a new Trustee - by the court in the jurisdiction of the child(ren)'s primary residence.

### **D. Death of Child(ren)**

If a child dies before reaching the age of \_\_\_\_\_ years, their share of the Estate shall be equally distributed between my other children. If that child has children of their own, then their share of the Estate should be equally distributed between their children.

If a child dies before the age of \_\_\_\_\_ years, the Trustee shall be obligated to use the remaining portion of their entitled Estate for all costs related to the funeral or last medical care the child received before their death.

If all children die before the age of \_\_\_\_\_ years, then their share of the Estate shall be passed on to the remaining Beneficiaries and distributed in accordance with Section 4. If there are no other living Beneficiaries besides the children, then their share of the Estate shall be given to my heirs-at-law.

### **E. Protection From Creditors**

No income or principal distributable from the Trust created under this Last Will and Testament shall be subject to the attachment by, or the interference or control of, any creditor of, any person seeking support from, any person furnishing necessary services to, or any assignee of, any Beneficiary. No property shall be taken, seized or otherwise reached by any legal or equitable process in satisfaction of any debt or liability of any Beneficiary (including governmental claims). If the Trustee, to their best judgment, believes that the child's portion of the Estate is susceptible to any outside party, then the Trustee is required to act in the best manner possible to protect the interests of the child. If and when the Trustee determines that the child's portion of the inheritance is no longer threatened by any outside pressures may the process of distribution continue in accordance with this Trust.

### **F. Accounting**

The Trustee will be required to provide a detailed and specific accounting, at least once per annum, showing assets, account balances, and any other statements that belong to the Beneficiaries of the Trust.

### **G. Second (2nd) Trustee**

If the Trustee named above is not able to perform their respective duties then there shall be a Second (2nd) Trustee known as \_\_\_\_\_, with a mailing address of \_\_\_\_\_, that shall hold the same powers as the Trustee and shall operate under the same terms of this Last Will and Testament.

### **GUARDIANSHIP FOR MINORS**

There shall be a Guardian appointed for any minor listed in this Last Will and Testament.

The Guardian, known as \_\_\_\_\_, with a mailing address of \_\_\_\_\_, shall bear unlimited power to act as caretaker of all minors in this Last Will and Testament, which includes but is not limited to catering to their educational and medical needs, and taking on everyday decision-making.

### **Second (2nd) Guardian**

If the Guardian named above is not able to perform their respective duties, there shall be a Second (2nd) Guardian known as \_\_\_\_\_, with a mailing address of \_\_\_\_\_, that shall bear the same rights and powers as the Guardian previously selected in this Last Will and Testament.

### **5. SPECIAL BEQUESTS**

Aside from the main Beneficiaries (as described in **Section 4**), there shall be the following individuals to receive special bequests:

- \_\_\_\_\_ to receive \_\_\_\_\_
- \_\_\_\_\_ to receive \_\_\_\_\_
- \_\_\_\_\_ to receive \_\_\_\_\_
- \_\_\_\_\_ to receive \_\_\_\_\_

### **6. PERSONAL PROPERTY**

I direct that all of my personal property that has not been bequeathed as specific bequests or as part of my Estate be \_\_\_\_\_

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### 7. OTHER PROPERTY

If there is any other property that is not part of the Estate covered by this Last Will and Testament, then that property should be \_\_\_\_\_

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### 8. DIGITAL ASSETS

I wish for all my Digital Assets (computers, tablets, iPads, phones, social media profiles, and any other profiles or devices) to be left with a Digital Assets Representative.

I direct that \_\_\_\_\_, of \_\_\_\_\_

\_\_\_\_\_,  
(hereinafter known as "the Digital Asset Representative"), to have the power and full control over all of my Digital Assets listed in **Addendum A**.

If for any reason the Digital Assets Representative is not able to serve, I nominate \_\_\_\_\_, of \_\_\_\_\_

\_\_\_\_\_,  
(hereinafter known as "the Second Digital Asset Representative"), to have the power and full control over the Digital Assets listed in Addendum A.

**A. Powers**

The acting Digital Asset Representative shall have unlimited power and authority over any and all of the Testator's Digital Assets which includes but is not limited to: computers, tablets, iPads, mobile phones, mobile applications, websites, or any other applications or devices which may contain binary or text formats. These powers shall not be required to be approved by any Probate Court. In addition to the powers stated, the Digital Asset Representative shall have access to all known devices and social media profiles and has the authority to upload, convert, or delete data. The powers shall continue in perpetuity.

**B. Slanderous Use**

If it is found that the Digital Asset Representative knowingly misrepresents, defames, or tarnishes the Testator during their management of their Digital Assets, that Digital Asset Representative shall be removed immediately from their position and the heirs-at-law shall designate a new Digital Asset Representative.

**C. Monetary Use**

If the Digital Asset Representative monetizes any part of the Digital Assets, all funds shall be transferred to the Beneficiaries in accordance with **Section 4** and will be considered part of the Testator's Estate.

**9. PREDECEASE**

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If any of my property cannot be readily distributed or sold, then it may be \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

### 10. EXCLUSIONS

It is my intention to exclude the following person(s) from receiving any distributions in association with this Last Will and Testament: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

### 11. PET DIRECTIVE

I would like to elect \_\_\_\_\_ (hereinafter known as "the Pet Guardian"), with a mailing address of \_\_\_\_\_  
\_\_\_\_\_,  
to act as the caretaker of the following animal(s) (hereinafter known as "the Pet(s)"): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

If for any reason the Pet Guardian is not able to serve, I nominate \_\_\_\_\_, of \_\_\_\_\_  
\_\_\_\_\_,  
(hereinafter known as "the Second (2nd) Pet Guardian").

Before the Estate is distributed between the Beneficiaries, I would like to appropriate funds for the care of my Pets. The Pet Guardian shall receive a monetary portion of my Estate as compensation for the expenses of caring for the Pets in the amount of \$ \_\_\_\_\_.

## **12. OMISSION**

I have intentionally and not as a result of any mistake or inadvertence omitted to provide for any family members of mine, if any, however defined by law, presently living or hereafter born or adopted, except as mentioned in this Will.

## **13. DISCRETIONARY POWERS OF PERSONAL REPRESENTATIVE**

The Personal Representative shall have and may exercise the following discretionary powers in addition to any common law or statutory powers without the necessity of court license or approval:

- A. To retain for whatever period my Personal Representative deems advisable any property, including property owned by me at my death, and to invest and reinvest in any property, both real and personal, regardless of whether any particular investment would be proper for a Personal Representative and regardless of the extent of diversification of the assets held hereunder.
- B. To sell and to grant options to purchase all or part of my Estate, both real and personal, at any time, at public or private sale, for consideration, whether or not the highest possible consideration, and upon terms, including credit, as my Personal Representative deems advisable, and to execute, acknowledge, and deliver deeds or other instruments in connection therewith.
- C. To lease any real estate for terms and conditions as my Personal Representative deems advisable, including the granting of options to renew, options to extend the term of terms, and options to purchase.
- D. To pay, compromise, settle or otherwise adjust any claims, including taxes, asserted in favor of or against me, my estate or my Personal Representative.
- E. To make any separation into shares in whole or in part in kind and at values determined by my Personal Representative, with or without regard to tax basis,

and to allocate different kinds and amounts of property and undivided interests in property among the shares.

- F. To make such elections under the tax laws as my Personal Representative shall deem appropriate, including elections with respect to qualified terminable interest property, exemptions and the use of deductions as income tax or Estate tax deductions, and to determine whether to make any adjustments between income and principal on account of any election so made.
- G. To make any elections permitted under any pension, profit sharing, employee stock ownership or other benefit plans.
- H. To employ others in connection with the administration of my Estate, including legal counsel, investment advisors, brokers, accountants and agents and to pay reasonable compensation in addition to my Personal Representative's compensation.
- I. To vote any shares of stock or other securities in person or by proxy; to assert or waive any stockholder's rights or privileges to subscribe for or otherwise acquire additional stock; to deposit securities in any voting trust or with any committee.
- J. To borrow and to pledge or mortgage any property as collateral, and to make secured or unsecured loans. The Personal Representative is specifically authorized to make loans without interest to any beneficiary hereunder. No individual or entity loaning property to the Personal Representative or Trustee shall be held to see to the application of such property.
- K. To work in absolute discretion and determine the allocation of any GST exemption available to me at my death to property passing under this Will or otherwise. The determination of the Personal Representative with respect to any

elections or allocation, if made or taken in good faith, shall be binding upon all affected.

L. To make decisions and settle any and all claims against the Estate including any Beneficiaries that may contest their share of Estate or this Last Will and Testament.

M. The Personal Representative shall be reasonably compensated for their time and efforts spent while carrying out the best interests of this Last Will and Testament.

#### **14. CONTESTING BENEFICIARY**

If any Beneficiary under this Will or any Trust mentioned herein contests or attacks this Will or any of its provisions, any share or interest in my Estate given to that contesting Beneficiary under this Will is revoked and shall be disposed of in the same manner provided herein as if that contesting Beneficiary had predeceased me.

#### **15. GENDER**

Whenever the context permits, the term "Personal Representative" shall include "Executor" and "Administrator", the use of a particular gender shall include any other gender, and references to the singular or the plural shall be interchangeable. All references to the Internal Revenue Code shall mean the Internal Revenue Code of 1986 or any successor Code. All references to Estate taxes shall include inheritance and other death taxes.

#### **16. ASSIGNMENT**

The interest of any Beneficiary in this Will shall not be alienable, assignable, attachable, transferable nor paid by way of anticipation, nor in compliance with any order, assignment or covenant and shall not be applied to, or held liable for, any of their debts or obligations either in law or equity and shall not in any event pass to his,

her, or their assignee under any instrument or under any insolvency or bankruptcy law, and shall not be subject to the interference or control of creditors, spouses or others.

### **17. SPECIAL WISHES AND DIRECTIVES**

I declare, in addition to the statements in this Last Will and Testament, the following Special Wishes and Directives: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

### **18. GOVERNING LAW**

This document shall be governed by the laws of the **State of South Dakota**.

### **19. BINDING ARRANGEMENT**

Any decision by my Personal Representative with respect to any discretionary power hereunder shall be final and binding on all persons interested. Unless due to my Executor's own willful default or gross negligence, no Executor shall be liable for said Executor's acts or omissions or those of any co-Executor or prior Executor.

I, the undersigned \_\_\_\_\_, do hereby declare that I signed and executed this instrument as my Last Will, that I signed it willingly in the presence of each of the undersigned witnesses, and that I executed it as my free and voluntary act for the purposes herein expressed, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Testator's Signature** \_\_\_\_\_

Testator's Printed Name \_\_\_\_\_

The foregoing instrument, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, subscribed on each page and at the end thereof by \_\_\_\_\_, the

above-named Testator, and by them signed, sealed, published and declared to be their LAST WILL AND TESTAMENT, in the presence of us and each of us, who thereupon, at their request, in their presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses thereto.

**First Witness Signature** \_\_\_\_\_

First Witness Printed Name and Mailing Address \_\_\_\_\_

\_\_\_\_\_

**Second Witness Signature** \_\_\_\_\_

Second Witness Printed Name and Mailing Address \_\_\_\_\_

\_\_\_\_\_

**TESTAMENTARY AFFIDAVIT**

STATE OF \_\_\_\_\_

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

Before me, the undersigned authority, on this date personally appeared \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ known to me to be the Testator and Witnesses, respectively, whose names are signed to the attached instrument; and, all of these persons being by me first duly sworn, \_\_\_\_\_, the Testator, declared to me and to the Witnesses in my presence that said instrument is their Last Will and Testament and that they had willingly signed and executed it in the presence of said witnesses as their free and voluntary act for the purposes therein expressed, that said Witnesses stated before me that the foregoing Will was executed and acknowledged by the Testator as their Last Will and Testament in the presence of said Witnesses who, in the presence and at the request of the Testator, and in the presence of each other, did subscribe their names thereto as attesting witnesses on this day of the date of said Will, and that the said Testator at the time of the execution of said Will, was over the age of eighteen (18) years, of sound and disposing mind and memory, and under no constraint or undue influence.

**Testator's Signature** \_\_\_\_\_

**First Witness Signature** \_\_\_\_\_

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

**Second Witness Signature** \_\_\_\_\_

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

Subscribed and sworn to before me by the said Testator and the above listed witnesses on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Notary Public Signature** \_\_\_\_\_

Notary Public Signature Printed Name \_\_\_\_\_

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

(Seal)



# Addendum A

This Addendum is solely meant for the viewing of the Digital Asset Representative mentioned in **Section 8** of this Last Will and Testament. This information is to be kept confidential and may only be used after the Testator's death.

I, \_\_\_\_\_, have elected the Digital Asset Representative, in accordance with **Section 8**, to have the authority to manage the following one Digital Assets: \_\_\_\_\_

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