NOTATIONS FOR FORM 110

This form is designed for a testator who has executed a revocable trust agreement to which the residue of the estate is to be added.

If it is desired to reserve apportionment rights for death taxes generated not only by marital trusts but also by other property passing outside the estate or revocable trust, substitute for first paragraph of FIRST:

1 FIRST: My executor shall pay all expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, and other proper charges against my estate (excluding debts secured by real property or life insurance). Except as hereinafter provided, my executor shall also pay all estate and inheritance taxes and generation-skipping taxes on direct skips which are assessed by reason of my death, including such taxes on property passing outside this will. Such payments, including interest and penalties on any tax, shall be charged against principal or income as provided by applicable state law. My executor shall make these payments from my estate without apportionment or reimbursement or charging any direct skip property. If, however, the cash and readily marketable assets in the principal of the residue of my estate are insufficient to make the foregoing payments in full, my executor shall certify the amount of the insufficiency to the then acting trustee under the trust agreement hereafter mentioned for payment.

My executor shall not pay death taxes caused by:

(a) Property over which I may have a power of appointment,
(b) Property in which I may have a qualifying income interest for life, unless for generation-skipping tax purposes the property has an inclusion ratio of zero and is treated as if the qualified terminable interest property election had not been made,
(c) Property constituting a direct skip for generation-skipping tax purposes which is caused by a disclaimer or which is from a trust not created or appointed by me,
(d) ________________________________, and

[ List additional property passing outside the instrument against which tax apportionment rights should be asserted. ]

(e) ________________________________.

The person holding or receiving the above-described property shall pay, either directly or to my executor, the amount, if any, by which the death taxes are increased as a result of the taxation of that property. If two or more properties cause an increase in a tax, the increase shall be allocated among the properties in proportion to their respective taxable values.

If testator’s revocable trust will be funded during lifetime and is to have sole responsibility for paying testator’s death taxes and expenses, (i) revise the revocable trust agreement so the revocable trust pays those taxes and expenses and (ii) substitute for FIRST:

2 FIRST: My executor shall not pay expenses of my last illness and funeral, claims, costs of administration and taxes assessed by reason of my death as I have directed their payment under the trust agreement hereafter mentioned, and I hereby confirm that direction.

My executor shall make such elections and allocations under the tax laws as my executor deems advisable, without regard to the relative interests of the beneficiaries and without liability to any person. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by my executor or by the trustee under the trust agreement hereafter mentioned.

If pour–over is to trust agreement which contains a qualified terminable interest property trust, and if it is desired to direct the executor to elect to have all of the trust qualify for the federal estate tax marital deduction, substitute for the tax election paragraph in FIRST:

3 My executor shall make such elections and allocations under the tax laws as my executor deems advisable, without regard to the relative interests of the beneficiaries and without liability to any person, except that if a Marital Trust is established under the trust agreement hereafter mentioned, my executor shall elect to have all of the Marital Trust treated as qualified terminable interest property for federal estate tax purposes. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by my executor or by the trustee under the trust agreement hereafter mentioned.
WILL

I, JOHN DOE, a resident of ________, ________, make this my will and revoke all prior wills and codicils.

FIRST: My executor shall pay all expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, and other proper charges against my estate (excluding debts secured by real property or life insurance). My executor shall also pay all estate and inheritance taxes assessed by reason of my death, including such taxes on property passing outside this will, except that the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property in which I may have a qualifying income interest for life or over which I may have a power of appointment shall be paid by the person holding or receiving that property. Such payments, including interest and penalties on any tax, shall be charged against principal or income as provided by applicable state law. My executor shall make these payments from my estate without apportionment or reimbursement. If, however, the cash and readily marketable assets in the principal of the residue of my estate are insufficient to make the foregoing payments in full, my executor shall certify the amount of the insufficiency to the then acting trustee under the trust agreement hereafter mentioned for payment.

My executor’s selection of assets to be sold to make the foregoing payments or to satisfy any pecuniary devises, and the tax effects thereof, shall not be subject to question by any beneficiary.

My executor shall make such elections and allocations under the tax laws as my executor deems advisable, without regard to the relative interests of the beneficiaries and without liability to any person. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by my executor or by the trustee under the trust agreement hereafter mentioned.

The balance of my estate which remains after the foregoing payments have been made or provided for shall be disposed of as hereinafter provided.
If there may be after-born children, add to SECOND:

4 I intend by this will to provide for all my children, including any hereafter born or adopted.

If there is community property, add to SECOND:

5 I intend by this will to dispose of my separate property and my share of our community property, and I confirm to my wife her share of our community property.

If special gifts of personal effects are desired, substitute for THIRD:

6 THIRD: I give (a) all my clothing and jewelry to my son, DAVID, if he survives me by 30 days, and (b) all my personal and household effects, automobiles, boats and collections not otherwise effectively disposed of by this will, and any insurance policies thereon, to my wife if she so survives me, otherwise to my children who so survive me to be divided equally among them as they agree. My executor shall sell any property as to which there is no agreement within 60 days after admission of this will to probate and shall add the proceeds to the residue of my estate.

If a separate writing identifying gifts of personal effects is desired and is permitted in your state, substitute for THIRD:

7 THIRD: I give all my personal and household effects, automobiles, boats and collections, and any insurance policies thereon, in accordance with a written statement which I shall have prepared prior to my death in conformity with state law. My executor may assume that no written statement exists if none is found within 30 days after admission of this will to probate. Except as otherwise provided in any such written statement, I give the aforementioned property to my wife if she survives me by 30 days, otherwise to my children who so survive me to be divided equally among them as they agree. My executor shall sell any property as to which there is no agreement within 60 days after admission of this will to probate and shall add the proceeds to the residue of my estate.

If the will elsewhere makes a special gift of personal effects (e.g., if a gift of furniture and furnishings is included with a gift of real estate), limit THIRD to those items “not otherwise effectively disposed of by this will.”

Tangible personal property not clearly described in THIRD (e.g., airplanes, tangible personality acquired for investment) should be specifically mentioned in the will.

If there may be minor children, add to THIRD:

8 If a child is a minor at the time of distribution, the guardian of or person in loco parentis to the child shall represent him or her in the division of the property, receipt for and hold his or her share or sell all or any part of it, and deliver the share or proceeds to the child when he or she reaches majority, or earlier if the guardian or person considers it to be for the child’s best interests.

If special gifts of property are desired, add the following after THIRD and renumber the succeeding articles:

9 FOURTH: If my wife survives me by 30 days, I give to her
(a) all my interests in our residences, including seasonal and vacation homes, and any insurance policies thereon, subject to any mortgage indebtedness and unpaid taxes and assessments on the properties;

OR

(b) all my transferable club memberships; and
(c) all my community property interests in any individual retirement plans in her name and any employee benefit plans in which she is a participant.
SECOND: My wife’s name is MARY DOE, and she is herein referred to as “my wife.” I have three children now living, namely:

   JOHN DOE, JR., born _____ (date) ______;
   DOROTHY DOE, born _____ (date) ______; and
   DAVID DOE, born _____ (date) ______.

THIRD: I give all my personal and household effects, automobiles, boats and collections, and any insurance policies thereon, to my wife if she survives me by 30 days, otherwise to my children who so survive me to be divided equally among them as they agree. My executor shall sell any property as to which there is no agreement within 60 days after admission of this will to probate and shall add the proceeds to the residue of my estate.
If pour–over is to a revocable trust agreement with settlor as initial trustee, substitute for FOURTH:

11 FOURTH: All the residue of my estate, wherever situated, including lapsed devises, but expressly excluding any property over which I may have power of appointment at my death, I give to the then acting trustee under the trust agreement executed by me on _________________, 20 ____, before the execution of this will, with myself as trustee, and under which NORTHERN TRUST, of ________, ________, is named as successor trustee, to be added to the trust estate held under that trust agreement as in effect at my death.

If pour–over is to a community property revocable trust agreement with settlors as initial trustees, substitute for FOURTH:

12 FOURTH: All the residue of my estate, wherever situated, including lapsed devises, but expressly excluding any property over which I may have power of appointment at my death, I give to the then acting trustees under the trust agreement executed by my wife and me on _________________, 20 ____, before the execution of this will, with my wife and me, as trustees, and under which NORTHERN TRUST, of ________, ________, is named as successor trustee, to be added to the trust estate held under that trust agreement as in effect at my death.

If the GUARDIAN APPOINTMENT article is included, also add the optional provisions for after-born children in the FAMILY article and for minor children in the PERSONAL EFFECTS article.

If an individual is to serve as co-executor, substitute for first paragraph of SIXTH:

13 SIXTH: I appoint my wife, MARY DOE, and NORTHERN TRUST as executors of this will. If for any reason either my wife or NORTHERN TRUST is unwilling or unable to act as executor, the other of them shall be sole executor of this will. If for any reason neither my wife nor NORTHERN TRUST is willing and able to act as executor as to any property, I appoint as executor as to that property such person or qualified corporation as NORTHERN TRUST shall designate in writing. The term “executor” shall mean the executors or executor from time to time qualified and acting under this will. The compensation of any corporate executor shall be in accordance with its schedule of fees in effect from time to time. The compensation, if any, of the individual executor shall be in addition to the full fee of the corporate executor.

If an individual is to serve as executor with power to add a corporate co-executor, substitute for first paragraph of SIXTH:

14 SIXTH: I appoint my wife, MARY DOE, as executor of this will. If my wife desires to associate a corporate executor with her, I appoint NORTHERN TRUST as co-executor of this will. If for any reason my wife is unwilling or unable to act as executor, I appoint NORTHERN TRUST as executor of this will. If for any reason neither my wife nor NORTHERN TRUST is willing and able to act as executor as to any property, I appoint as executor as to that property such person or qualified corporation as NORTHERN TRUST shall designate in writing. The term “executor” shall mean the executor or executors from time to time qualified and acting under this will. The compensation of any corporate executor shall be in accordance with its schedule of fees in effect from time to time. The compensation, if any, of the individual executor shall be in addition to the full fee of the corporate executor.
FOURTH: All the residue of my estate, wherever situated, including lapsed devises, but expressly excluding any property over which I may have power of appointment at my death, I give to the then acting trustee under the trust agreement executed by me on ______________________, 20 ____, before the execution of this will, with NORTHERN TRUST [insert full legal name of applicable NORTHERN TRUST bank throughout the instrument], of ____________, ___________, as trustee (designated as trust number ____________), to be added to the trust estate held under that trust agreement as in effect at my death.

FIFTH: If my wife does not survive me or dies after my death without providing for the custody of a minor child of mine, I name _____________________ as guardian of the person of that child. If a guardian or conservator of the property and estate of a minor child is necessary, I name ________________________ to serve in that capacity. No bond or security shall be required of any guardian or conservator.

SIXTH: I appoint NORTHERN TRUST as executor of this will. If for any reason NORTHERN TRUST is unwilling or unable to act as executor as to any property, I appoint as executor as to that property such person or qualified corporation as NORTHERN TRUST shall designate in writing. The compensation of any corporate executor shall be in accordance with its schedule of fees in effect from time to time.
If an individual is to serve as co-executor, insert after fourth sentence in second paragraph of SIXTH:

15 No individual executor shall participate in the exercise of any tax election or allocation which affects his [or her] interests or the interests of any person to whom he [or she] is legally obligated, or possess any incidents of ownership with respect to any policy of insurance on his [or her] life, and the corporate executor alone shall exercise that tax election or allocation and possess those incidents of ownership.

If trust agreement includes provisions for the investment management of special assets, the following may be added to SIXTH:

16 If any ______________ (“special assets”) are included in my estate, my executor shall entrust to ______________ responsibility for the investment, voting and management of the special assets, and my executor shall have no responsibility therefor.

If a no contest provision is desired and is permitted in your state, the following may be added to SIXTH:

17 If any person shall seek to prevent the admission of this will to probate or to contest the validity of any part of this will, including any codicil hereto, then I disinherit that person and his or her spouse and descendants, and all of them shall be deemed to have predeceased me for all purposes of this will.
I give my executor power to retain any property that I own at my death; to invest in bonds, stocks, notes, bank deposits, shares of investment companies (including ones that receive services from, and pay compensation to, a corporate executor hereunder or a parent or affiliate company), or other property; to retain or make any investment without liability, regardless of type, quality, marketability or any rule requiring diversification, and I understand that investments are subject to risk, including possible loss of principal, and that my executor is not liable for losses which do not result from a violation of the executor’s duties; to lease, borrow with or without security from any lender, sell or exchange all or any part of my estate, real or personal, for such prices and upon such terms as my executor deems proper; to enter into mineral transactions; to compromise, contest, prosecute or abandon claims in favor of or against my estate; to distribute income and principal in cash or in kind, or partly in each, and to allocate or distribute undivided interests or different assets or disproportionate interests in assets (and no adjustment shall be made to compensate for a disproportionate allocation of unrealized gain for federal income tax purposes), and to value my estate in order to make allocation or distribution, and no action taken by my executor pursuant to this power shall be subject to question by any beneficiary; to determine in cases not covered by applicable state statute the allocation of receipts and disbursements between income and principal; to deal with the fiduciary of any trust or estate in which any beneficiary under the aforementioned trust agreement has an interest, though an executor hereunder is such fiduciary; to deal with a corporate executor hereunder individually or a parent or affiliate company; and to execute and deliver necessary instruments and give full receipts and discharges. My executor may consult with legal counsel and other agents at estate expense and shall not be liable for any action taken or omitted in good faith reliance upon the advice or recommendation of the legal counsel or other agent. My executor shall not be personally liable for acts or omissions done in good faith. My executor shall have power to inspect and monitor businesses and real property (whether held directly or through a partnership, corporation, trust or other entity) for environmental conditions or possible violations of environmental laws; to remediate environmentally–damaged property or to take steps to prevent environmental damage in the future, even if no action by public or private parties is currently pending or threatened; to abandon or refuse to accept property which may have environmental damage; my executor may expend estate funds to do the foregoing, and no action or failure to act by my executor pursuant to this power shall be subject to question by any beneficiary. The foregoing powers shall be exercised by my executor without authorization by any court and, as to property subject to administration outside the state of my domicile, only with the approval of my domiciliary executor. No bond or security shall be required of any executor wherever acting. If permitted by law and if not inconsistent with the best interests of the beneficiaries as determined by my executor, the administration of my estate shall be independent of the supervision of any court.
The headings in this will are for convenience of reference only and shall not be considered in the interpretation of this will.

[ Note to drafting attorney:
As needed, modify the following Testimonium,
Attestation and Affidavit
to satisfy the legal requirements and customary practice
of the state in which the testator resides. ]

IN WITNESS WHEREOF I have signed this will, consisting of _____ pages, [this][the following] page included, and for the purpose of identification have placed my initials at the foot of each preceding page, this ___________ day of ________________, 20 ______.

We certify that the above instrument was on the date thereof signed and declared by JOHN DOE as his will in our presence and that we, at his request and in his presence and in the presence of each other, have signed our names as witnesses thereto, believing JOHN DOE to be of sound mind and memory at the time of signing.

____________________________________________
Residing at ________________________________

____________________________________________
Residing at ________________________________

____________________________________________
Residing at ________________________________
STATE OF __________________________  AFFIDAVIT
COUNTY OF ________________________

We, the undersigned, being the testator and the witnesses, respectively, whose names are signed to the foregoing instrument, and being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his will and that he signed willingly, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as a witness and that to the best of his or her knowledge the testator was at that time of legal age, of sound mind and under no constraint or undue influence.

__________________________________  TESTATOR

__________________________________  WITNESS

__________________________________  WITNESS

__________________________________  WITNESS

Subscribed, sworn to and acknowledged before me by JOHN DOE, the testator, and subscribed and sworn to before me by each of the above witnesses, this ______ day of ______________________, 20 ______.

__________________________________  NOTARY PUBLIC

My commission expires ____________

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