**Special Language for Last Wills and Testaments**

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# Disinheriting Spouses

Even expressly disinherited spouses have the right to take an elective share of the Testator’s estate during the probate process (see N.Y. EPTL §5-1.1-A). This can be countered if:

* The spouse abandoned and/or refused to financially support the Testator:

***[SPOUSE] has abandoned me and our marriage [STATE REASONS] [AND/OR] [SHE/HE/THEY] has failed or refused to provide support for me [DESCRIBE]. Consequently, [HE/SHE/THEY] should be disqualified as a surviving spouse under Sections 5-1.2(a)(5) [****This is the section re. abandonment. Delete if inapplicable****.] and 5-1.2(a)(6) [****This is the section re. support. Delete if inapplicable****.] of the N.Y. EPTL and should not be entitled to an elective share of my estate under Section 5-1.1-A of the N.Y. EPTL.***

* Or, if the Testator obtained a Waiver of Elective Share from the spouse:

***I have obtained a Waiver of Elective Share from [SPOUSE], which shall accompany this, my Last Will and Testament.***

* Or if the Testator and their spouse executed a prenuptial agreement noting that the spouse is not entitled to an elective share.
* For spouses who have neither abandoned nor refused to financially support the Testator, and from whom the Testator has not obtained a Waiver of Elective Share, use:

***I understand that I have left no gift herein for the benefit of [SPOUSE], and such is my intent, that he/she/they take nothing from my estate.***

# Party with Multiple Residences

If anyone listed in the will has multiple residences:

***“…[NAME], currently residing alternatively at [ADDRESS 1] and [ADDRESS 2]…”.***

# Gifting/Selling a House/Condominium

Gifting:

***I give all of my rights, title and interest in that certain real property located at [ADDRESS], together with the land, buildings, improvements and appurtenances thereon (my “Property”), to [BENEFICIARY].***

Selling to Distribute Proceeds:

***I direct my executor to sell all of my rights, title and interest in that certain real property located at [ADDRESS], together with the land, buildings, improvements and appurtenances thereon, and to [****Choose one of the following****:] include the proceeds from such sale in my Residuary Estate, as described below OR distribute the proceeds from such sale (my “Sale Proceeds”) to [BENEFICIARY].***

# Gifting/Selling a Co-op[[1]](#footnote-1)

Gifting a Non-Limited Equity Co-op:

***I give all of my rights, title and interest in that certain co-operative apartment Unit [NUMBER] located at [ADDRESS], together with the shares of any co-operative corporation and the proprietary lease relating to such apartment, that I own (my “Apartment”) to [BENEFICIARY].***

Gifting a Limited Equity (Mitchell-Lama, HDFC) Co-op:

***I give all of my rights, title and interest in that certain [Mitchell-Lama or HDFC] co-operative apartment Unit [NUMBER] located at [ADDRESS], together with the shares of any co-operative corporation and the proprietary lease relating to such apartment, that I own (my “Apartment”) to [BENEFICIARY].***

Selling a Co-op and Distributing Proceeds:

***I direct my executor to sell all of my rights, title and interest in that certain co-operative apartment Unit [NUMBER] located at [ADDRESS] and to [Note: Choose one of the following:] include the proceeds from such sale in my Residuary Estate, as described below OR distribute the proceeds from such sale (my “Sale Proceeds”) to [BENEFICIARY].***

# Gifting Land

***I give all my rights, title and interest that certain plot of land, lot number [LOT NUMBER], located at [ADDRESS], together with any land, buildings, improvements and appurtenances thereon (my “Plot”), to [BENEFICIARY].***

# Giving to Charity

***I give [BEQUEST] to [CHARITABLE ORGANIZATION], [LOCATED AT / WITH HEADQUARTERS LOCATED AT] [ADDRESS], for its general purposes. If [CHARITABLE ORGANIZATION] is no longer in existence at the time of my death, I give [BEQUEST] to any successor organization, or if none, then to any similar charitable organization that my executor, in [HIS/HER/THEIR] sole and absolute discretion, shall choose.***

# Preserving Gifts to/Appointments of In-Laws

If a Guardian of the Person is being appointed, and they are an in-law, and the Testator wishes for this appointment to remain in the event of divorce:

***[GUARDIAN] is currently my [DAUGHTER/SON/CHILD]-in-law, however, any subsequent annulment of marriage, divorce or separation between [GUARDIAN] and my [DAUGHTER/SON/CHILD] [NAME] shall not affect this appointment.***

If giving to an in-law, and the bequest should still be made even if the Testator’s in-law is no longer married to the Testator’s relative at the time of the Testator’s death, and the Testator would still wish the in-law to receive the distribution:

***I give [BEQUEST] to [NAME OF IN-LAW]. [NAME OF IN-LAW] is currently my [DAUGHTER/SON/CHILD]-in-law, however, any subsequent annulment of marriage, divorce or separation between [NAME OF IN-LAW] and my [DAUGHTER/SON/CHILD] [NAME] shall not affect this bequest.***

# Miscellaneous

Testators may not direct beneficiaries to do anything with their bequest/s. However, they may state their wishes as to what a beneficiary will do with their bequest/s. If this is the case, use precatory language (tailor as appropriate):

***It is my “wish and desire” that my [BEQUEST] remain in my family and that my [BENEFICIARY] will retain my [BEQUEST] and pass it on to [HIS/HER/THEIR] descendants. My “wish and desire” shall in no way be construed as a requirement on the part of my executor or beneficiaries, as I mean only to state my preference.***

If there will be costs associated with disposing tangible personal property or specific bequests (tailor as appropriate):

***I direct my executor to pay out of my Residuary Estate all expenses, costs, fees and other charges incurred in connection with the preservation, protection and delivery of my Tangible Personal Property (my “Costs”), even though my Tangible Personal Property is bequeathed under this, my Last Will and Testament. If my Residuary Estate lacks sufficient funds to pay the Costs, I direct that the beneficiaries of my Tangible Personal Property disposed of in this, my Last Will and Testament, shall pay the Costs on a pro-rated basis. If any beneficiary of my Tangible Personal Property is unable or unwilling to pay the Costs, then for this bequest, the beneficiary shall be treated as if he, she, or they predeceased me, and the bequest shall be distributed to the alternate beneficiary designated in this, my Last Will and Testament, who shall pay the Costs. Should no beneficiary of my Tangible Personal Property agree to pay the Costs, I direct my executor to dispose, in [HIS/HER/THEIR] sole and absolute discretion, of such bequest.***

If the Testator is concerned about beneficiaries contesting the Will***:***

***If any one of my beneficiaries shall challenge any provision of this, my Last Will and Testament, it is understood that he, she, or they shall then be considered to have predeceased me and shall not receive any portion of my estate.***

# Digital Assets

Notes:

* Language contained in this portion of this document should immediately precede the General Bequests (Residuary Estate) Article.
* References to Article letters in the below language are for guidance only.
* Regarding content of accounts (vs. tangible digital assets), the Testator should refer to the Terms of Service, Online Tool, or other governing instrument with respect to such accounts, as these may override any contradictory instructions in a Will.
* The below Articles dealing with executors’ powers may be modified if the Testator has more than one executor and wants them to have different levels of power, or if the executors’ powers should be changed based on whether a named beneficiary predeceases the Testator.

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IF THE EXECUTOR IS TO BE ALLOWED TO ACCESS ALL CONTENT, MODIFY, AND/OR DELETE CONTENT, AND/OR TO CLOSE ACCOUNTS USE THE LANGUAGE INCLUDED IN THE LAST WILL & TESTAMENT TEMPLATE.

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IF BENEFICIARIES ARE TO BE DESIGNATED FOR CERTAIN TANGIBLE DIGITAL DEVICES:

***ARTICLE [C]: Digital Assets; Tangible Digital Devices.***

***I give my digital devices, including but not limited to desktops, laptops, tablets, storage devices, mobile telephones, smartphones, and any similar digital device which currently exists or may exist as technology develops, with the exception of those items specifically bequeathed under this, my Last Will and Testament, to [BENEFICIARY]. My executor may take any action, including without limitation, the deletion of Information with respect to my digital devices.***

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IF BENEFICIARIES ARE TO BE DESIGNATED FOR CERTAIN NON-TANGIBLE DIGITAL ASSETS

***ARTICLE [D]: Digital Assets; Non-Tangible Digital Assets.***

***Unless prohibited by a user agreement, Terms of Service Agreement, Online Tool, or other governing instrument with respect to my Accounts, Digital Assets, Electronic Communications, Information and Records, I give my Accounts, Digital Assets, Electronic Communications, Information and Records as follows:***

Note: Examples of some Digital Assets that may be provided for include check through fees, Domain Names, Virtual Property, Bitcoins, and all accrued rewards program interests (airline, hotel, or otherwise).

Note: Article D is optional. It should be used if the Testator has Digital Assets with some underlying value (i.e., more than just information) or if the Testator wants to give a record of the Digital Assets (i.e., contents of email accounts) to a beneficiary or beneficiaries.

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IF BENEFICIARIES ARE *NOT* TO BE DESIGNATED FOR ANY TANGIBLE DIGITAL DEVICES

Tangible Digital Devices not provided for will become part of the Residuary Estate.

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IF BENEFICIARIES ARE TO *NOT* BE DESIGNATED FOR ANY NON-TANGIBLE DIGITAL ASSETS

Non-Tangible Digital Assets not provided for will become part of the Residuary Estate. If the Testator does not want anyone to have access to their Non-Tangible Digital Assets, those wishes should be clearly stated. See the below two sections.

***Federal law, to the extent such lawful consent is required. My executor acting hereunder shall do so with my “express authorization”, in accordance with 18 U.S.C. § 2701(c)(2), for purposes of applicable computer-fraud and unauthorized-computer-access laws.***

Note: The above paragraph is optional.

***The authority granted under this, Article [B] of this, my Last Will and Testament, is intended to provide my executor with full authority to access and manage my Accounts, Digital Assets, Electronic Communications, Information and Records to the extent permitted under applicable state and federal law and shall not limit any authority granted to my executor under such laws.***

***To the extent permitted by law, it is my intent to give my executor the same authority over my Accounts, Digital Assets, Electronic Communications, Information and Records as I had during my lifetime.***

***ARTICLE [C]:*** ***Digital Assets; Non-Tangible Digital Assets.***

***Unless prohibited by a user agreement, Terms of Service Agreement, Online Tool, or other governing instrument with respect to my Accounts, Digital Assets, Electronic Communications, Information and Records, I give the contents of my email messages to [BENEFICIARY]. If [BENEFICIARY] should predecease me, I direct that no one shall receive the contents of my email messages.***

1. Gifting/selling of co-ops is subject to constraints contained in the co-op bylaws and proprietary lease, which may contain transfer fees/flip taxes that must be paid to the co-op. Additionally, with limited-equity co-ops, where the testator intends for the beneficiary to also occupy the unit, Title 28, Chapter 3 of the Rules of the City of New York contains rules regarding succession which define who can/cannot occupy the unit. You should review and become familiar with any bylaws/lease terms and/or City regulations that may affect your client’s intended gift so that your client and their beneficiaries are aware of same, as what your client intends may or may not be legally possible. [↑](#footnote-ref-1)