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(Print and/or save these notes in a separate document and delete this entire text box from your draft.)

**DRAFTING NOTES**

\*\*\*\*\*Please review our **Life Planning Documents Manual** and **Special Language for Last Will & Testaments before** you set out to draft your client’s Last Will & Testament. You will find both of these documents in our VOLS Pro Bono Library (volsprobono.org/probonolibrary).\*\*\*\*\*

Drafting Wills for clients with low-income and limited resources is a different practice that carries different considerations than drafting wills for clients with assets of significant value. For this reason, even if you are an experienced practitioner, it is important that you review our Manual before you draft your client’s Will.

Furthermore, you may need to add language from the “Special Language for Last Will & Testaments” document to your draft depending on your client’s circumstances. For this reason it is very important that you read through that document before you set out to draft so that you can be sure to include any necessary special language.

If you are not sure whether or not an article in this template should remain included or be deleted, ask VOLS before deleting.

Your draft should be watermarked or otherwise indicated as such until VOLS and your client have approved the final version.

Please format once all content has been drafted and approved such that:

* The page with the client’s signature on it should have at least a few lines of the text of the will on it, too. (This means you might need to add some spacing. It’s okay if there is some blank space at the bottom of the page before the page with the client’s signature on it.)
* The witness’ signature page takes up only one page – the last numbered page.
* Article headings are numerically sequential.
* In-text article references start with a capital letter, the rest of the word lowercase, unbold, unbracketed, and correspond accurately.
* Pronoun designations are lowercase, unbold, unbracketed, and accurately designated.
* Any bold and bracketed notes to the drafter are deleted.

Lastly, remember to have VOLS review drafts of all of your client’s documents before they are sent to your client for review/execution.

**Last Will and Testament**

**OF**

**[XXXXXXXXXXXXXXXXX]**

I, [XXXXXXXXXXX], residing at [ADDRESS] and being of sound mind and memory, do hereby make, publish and declare this to be my Last Will and Testament (“Will”).

**FIRST:** ***Revocation***. I hereby revoke any and all wills and codicils made by me at any time heretofore.

**SECOND:** ***Family members****.* I have five children: Alexander [XXXX] (“Alexander”), of [ADDRESS], Brian [XXXX] (“Brian”), of [ADDRESS], Catherine [XXXX] (“Catherine”), Deborah [YYYY] (“Deborah”), of [ADDRESS], and Edward [ZZZZ] (“Edward”), of [ADDRESS]. I understand that I have left no gift herein for the benefit of my son Edward, and such is my intent, that he takes nothing from my estate. [***Optional addition*:**I recognize that I have a very large extended family, each of whom I care for deeply; however, because of my modest estate, I have chosen only to benefit those family members named as beneficiaries under this, my Last Will and Testament. It is my hope that my excluded family members will understand my decision.]

**THIRD:** ***Payment of Debts***. I direct my executor to pay all my funeral expenses and debts, including any expenses of my last illness, the expenses of the administration of my estate, any income taxes owed by me, including any tax returns to be filed in the last year of my life, and all estate, inheritance, income, or other taxes payable with respect to my estate or property included in my estate, whether or not passing under this Will, and any interest and penalties thereon (my “Expenses”), as soon as practicable after my death. My executor is directed to investigate the existence of all claims of creditors and determine which claims are valid and should be approved, and which should be rejected. My executor is directed to SCPA 1802 which suggests waiting at least seven (7) months before distributing any assets to beneficiaries as directed in this Last Will and Testament. Any such Expenses shall be allocated to my residuary estate, if any, without apportionment and with no right of reimbursement from any recipient of a distribution from my residuary estate.

**FOURTH: *Tangible Personal Property.***

(A) I give my Steinway piano to my friend and neighbor XXXXXXXX.

(B) I give the remainder of my personal property, including articles of   
personal and household use or ornament, to the following three of my four children XXXXXX, XXXXXX, and XXXXXX, to be divided among them in shares of approximately equal value by my executor as she sees fit. [Alternative language: Such property shall be divided into the shares as the beneficiaries agree, or, if they are unable to agree, as my executor shall determine. OR: I direct my executor to distribute such property in accordance with a memorandum that I intend to deliver to my executor before my death.]

If any of these three of my four children shall predecease me, that child’s share shall be divided among the remainder of these three of my four children by my executor as she sees fit.

**FIFTH: *Specific Bequests.***

(A) I give to [XXXXXXXX] all of my right, title and interest in and to the proprietary lease and appurtenant stock for cooperative apartment number 1234, at 1234 Church Street, New York, NY. If [XXXXXXXX] shall not survive me, I give all of my right, title and interest in and to the proprietary lease and appurtenant stock for the cooperative apartment to [XXXXXXXX].

(B) I give my pet cat “Mezzo-Mezzo” to my friend and neighbor T.S. Elliot, III; but if T.S. Elliot, III shall not survive me I give my pet cat “Mezzo-Mezzo” to Bideawee, Inc. of New York, New York, a pet welfare organization, tax ID # [XXXXXXXXX], along with a bequest of $500. [Note: If the Testator is giving a specific bequest to a minor child, incorporate the following language following such bequest:]   
 I designate [NAME] to act as Custodian of the share of my [SPECIFIC BEQUEST] passing to [MINOR BENEFICIARY] until [SHE/HE/THEY] reaches the age of eighteen (18). ***[Note: The Surrogate’s Court will re-construe the instructions of a will if it was executed prior to a divorce in the family. If the guardian is an in-law and the Testator wishes for this appointment to remain in the event of divorce, also add the following language:]*** [NAME] is currently my [DAUGHTER/SON/CHILD]-in law, however, any subsequent annulment of marriage, divorce or separation between [NAME] and my [DAUGHTER/SON/CHILD] [CHILD-BENEFICIARY NAME] shall not affect this appointment.

**SIXTH:**   ***Digital Assets.*** I hereby grant to my executor, in addition to the general powers conferred upon them by law, the power to access, control and dispose of as part of my estate any electronic accounts, data and software (in each case whether stored locally or remotely) owned or accessible by me, including, but not limited to, (a) my online financial, social media, photo-sharing, blog, email and short messages service accounts and (b) the contents of all of my electronic devices (including, but not limited to, personal computers and mobile devices). I authorize my executors to obtain and change the usernames and passwordsrequired to access such assets. My executors shall not be liable to any person for accessing (or failing or declining to access) such assets. I intend that this Article [Sixth] shall be construed as my lawful consent and authorization, under any applicable state or federal data privacy or criminal law, including, but not limited to, the provisions of Section 13-A.2.2 of the New York Estates, Powers and Trusts Law, of all such access by my executor and any attendant disclosures by any custodian who maintains or stores any digital assets owned by me. The authority granted under this my Last Will and Testament, is also intended to constitute my “lawful consent”, in accordance with 18 U.S.C. §§ 2702(b)(3) and 2702(c)(2) , for a custodian to divulge the content of any digital asset under the Electronic Communications Privacy Act of 1986, as amended, and any other applicable state or 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.

In addition, my executor may engage experts or consultants or any other third party as necessary or appropriate to effectuate any actions with respect to my digital assets, including but not limited to such actions as may be necessary or appropriate to help decrypt electronically stored information.

[If my executor shall determine that it is necessary or appropriate to engage and delegate authority to an individual pursuant to this my Last Will and Testament, it is my “wish and desire” that my [RELATIONSHIP TO TESTATOR], [NAME], of [ADDRESS], be engaged for this purpose. My “wish and desire” shall in no way be construed as a requirement on the part of my executor as I mean only to state my preference.]

[I direct my executor to contact Facebook and take the appropriate steps to have my account “memorialized”.] [I direct my executor to contact Instagram and take the appropriate steps to have my account “memorialized”.] [I direct my executor to contact LinkedIn and take the appropriate steps to have my account closed.]

**SEVENTH:** ***General and Residual Bequests***.

(A) I give $200 to the Diller-Quaile School of Music.

(B) I give all the rest, residue and remainder of the property, both real and personal, which I may own or in any other way be entitled to at the time of my death (my “residuary estate”), to the following three of my four children, as follows: a 1/6 share to my son [XXXXXX], a 1/6 share to my son [XXXXXX], and a 2/3 share to my daughter [XXXXXX]. If any of these three of my four children fails to survive me, I give that child’s share to such child’s issue, if any; and if that child leaves no issue, that child’s share shall be divided among the remainder of these three of my four children in equal shares.

**EIGHTH:** ***Guardians of the Person and Property. [Note: If the Testator has minor children, incorporate the following Article. This Article should follow the Article pertaining to General Bequests.]:*** I nominate, constitute and appoint [GUARDIAN] as Guardian of the Person and Property of any child of mine who has not attained the age of 18 (eighteen) years at the time of my death (my “minor children”). In the event the person I nominate, constitute and appoint above is unable or unwilling to act as Guardian of the Person and Property for my minor children, I hereby designate [ALTERNATE GUARDIAN], as Guardian of the Person and Property for my minor children.

**NINTH:** ***Distribution to disabled beneficiaries.*** Notwithstanding any provision contained in this Will to the contrary, if at any time my executor, or any trustee hereunder, in such fiduciary’s sole and absolute discretion, determines that any beneficiary under this Will, or under any of the trusts created hereunder, has a severe and chronic or persistent disability and is or may in the future be in need of any means-tested governmental assistance, such beneficiary’s interest shall not be paid directly to such individual but shall instead be held and managed, as provided herein:

(A) My fiduciary shall hold such share in a separate trust for the benefit of such beneficiary. The initial trustee of such trust shall be the executor of this Will, or if a trust for such beneficiary is otherwise created herein, the trustee of such trust, although the executor or trustee, as the case may be, shall have the authority to designate a successor trustee, co-trustee, or a successor of successors in such office to act one at a time or together with co-fiduciaries. The provisions of this Will regarding resignation and appointment of successor fiduciaries shall also apply to resignations and appointments of fiduciaries under this Article **[Ninth]**.

(B) My trustees shall collect the income therefrom and, after deducting all charges and expenses properly attributable thereto, shall, at any time and from time to time, apply for the benefit of the beneficiary, so much (even to the extent of the whole thereof) of the net income and principal of the trust as my trustees, in their sole discretion, shall deem advisable, subject, however, to the limitations set forth below. My trustees shall add to the principal of the trust the balance of net income not so paid or applied.

(C) It is my intention to create for such beneficiary a Supplemental Needs Trust that conforms to the provisions of Section 7-1.12 of the New York Estates, Powers and Trusts law, or any successor statute thereto. Consistent with that intent, it is my desire that before expending any amounts from the net income and/or principal of the trust, my trustees consider the availability of all benefits from government or private assistance programs for which such person may be eligible and that, where appropriate and to the extent possible, my trustees endeavor to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of such individual.

(D) None of the income or principal of the trust shall be applied in such a manner as to supplant, impair or diminish benefits or assistance of any federal state, county, city or other governmental entity for which such person may otherwise be eligible or which such person may be receiving.

(E) I direct that the provisions of Section 7-1.6 of the New York Estates, Powers and Trust Law, as the same may be amended or any successor statute thereto, shall not be available to require any invasion of principal by the trustees or any court.

(F) The beneficiary shall not have the power to assign, encumber, direct, distribute or authorize distributions from the trust.

(G) Notwithstanding the above provisions, my trustees may make distribution to meet the beneficiary’s need for food, clothing, shelter or health care even if such distributions may result in an impairment or diminution of such person’s receipt or eligibility for government benefits or assistance, but only if my trustees determine that (i) such beneficiary’s needs will be better met if such distribution is made, and (ii) it is in the beneficiary’s best interests to suffer the consequent effect, if any, on such person’s eligibility for or receipt of government benefits or assistance; provided, however, that if the mere existence of my trustees’ authority to make distributions pursuant to this subparagraph shall result in the beneficiary’s loss of government benefits or assistance, regardless of whether such authority is actually exercised, this paragraph shall be null and void and my trustees’ authority to make such distributions shall cease and shall be limited as provided above, without exception.

(H) Upon the death of the beneficiary, any balance remaining in the trust being held for such individual shall be distributed to the surviving issue of the beneficiary, *per stirpes.* If no issue of the beneficiary is surviving, the balance of the trust shall be distributed to my issue who survive such deceased beneficiary, *per stirpes.*

(I) **[ONLY FOR TESTATOR WITH SPOUSE]** Notwithstanding the above provisions of this Article **[Ninth]**, if my spouse is determined by my executor to be a person who suffers from a severe and chronic or persistent disability as defined by Section 7-1.12 of the New York Estates Powers and Trust Law, and if any bequest, whether outright or in trust, to my spouse is a bequest qualifying, or elected to qualify for the estate tax marital deduction, then, the provisions of this Article **[Ninth]** shall apply; provided, however, that the trustee shall collect the income therefrom, and after deducting all charges and expenses properly attributable thereto, pay or apply for the benefit of my spouse, all of the net income therefrom, at least quarterly. My executor shall, in **[his/her/their]** sole and absolute discretion, determine whether to elect to qualify any portion of this trust for the Federal estate tax marital deduction. If my executor shall elect to have any part or all of any trust hereunder qualify for such marital deduction, notwithstanding any other provisions of this Will or this Article **[Ninth]**, none of the powers or discretions granted or made to my executor and trustee by this Will shall be exercisable or enforceable in such manner as to disqualify such portion or all of the trust for which such election has been made from the marital deduction allowable in determining the federal estate tax on my estate.

(J) **[ONLY FOR TESTATOR WITH SPOUSE]** If my spouse should make an election pursuant to Section 5-1.1A of the New York Estates, Powers and Trust Law, or be required to make such an election in order to obtain or continue receipt of government benefits, the trust created and administered pursuant to this Article shall, after the distribution of the statutory share to my spouse, continue for the benefit of my spouse, and the election pursuant to Section 5-1.1A shall not result in the termination of such trust as if my spouse had predeceased me.

**TENTH:** ***Distribution to Minors***.

(A) If any principal or income of my estate or any trust hereunder vests in absolute ownership in a minor, my executor or trustee, at any time and without court authorization may: distribute the whole or any part of such property to the beneficiary; or use the whole or any part for the health, education, maintenance and support of the beneficiary; or distribute the whole or any part to a guardian, committee, or other legal representative of the beneficiary, or to a custodian for the beneficiary (including a custodian appointed by my executor or trustee without court order) under any Gifts to Minors or Transfers to Minors Act, or to the person or persons with whom the beneficiary resides. Evidence of any such distribution or the receipt therefor executed by the person to whom the distribution is made shall be a full discharge of my executor and trustee from any liability with respect thereto, even though my executor or trustee may be such person.

(B) If any beneficiary under this Will is a minor, my executor or trustee may defer the distribution of the whole or any part of such property until the beneficiary attains the age of twenty-one (21) years, and may hold the same as a separate fund for the beneficiary with all the powers described in Article **[Thirteenth]** hereof. If the beneficiary dies before attaining said age, any balance shall be paid and distributed to the estate of the beneficiary.

(C) The word minor, wherever used in this Article **[Tenth]**, shall mean any person who shall be under the age of twenty-one (21) years.

**ELEVENTH:** ***Survivorship***. Any individual who shall not survive me by thirty (30) days shall be deemed to have predeceased me.

### **TWELFTH:** ***Executors; Bond***. I appoint my eldest daughter, [XXXXXX], to be executor of this, my Last Will and Testament. If she shall fail to qualify, decline or cease to act as executor hereunder, I appoint my youngest daughter, [XXXXXX], to act as executor in her place. In the event that both [XXXXXXX] and [XXXXXX] shall fail to qualify, decline or cease to act as executor hereunder, I request that the Public Administrator of the County of [***choose Testator’s county:*** New York, 31 Chambers Street, New York, New York 10007 / Kings, 360 Adams Street, Brooklyn, NY 11201 / Queens, 88-11 Sutphin Blvd., Jamaica, NY 11435 / Richmond, 130 Stuyvesant Place, Staten Island, NY 10301 / Bronx, 851 Grand Concourse, Bronx, NY 10451] act as executor of my Will. I direct that no bond or any other security shall be required, including a bond or other security for the prepayment of commissions, in any state, of the executor appointed under this Will.

**THIRTEENTH:** ***Executor’s Powers***. In the administration of my estate, my executor shall have the powers set forth in Article 11 of the Estates, Powers and Trusts Laws of the State of New York, as amended from time to time.

***IN WITNESS WHEREOF***, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[XXXXXX XXXXXX], *Testator*

The foregoing instrument was signed by the above named Testator, [TESTATOR’S NAME], or by someone directed by the Testator to sign on the Testator’s behalf and in the Testator’s presence, on the \_\_\_\_ day of \_\_\_\_\_\_, 20\_\_\_, at [ADDRESS OF EXECUTION] in the Borough of [BOROUGH], City of [CITY], County of [COUNTY] and State of New York. The Testator signed in our presence and this instrument was at the same time and place published and declared by [HIM/HER/THEM] to be [HIS/HER/THEIR] Last Will and Testament, and thereupon we, at [HIS/HER/THEIR] request, and in [HIS/HER/THEIR] presence, and in the presence of each other, did subscribe our names thereto as attesting witnesses; or the Testator, within 30 days of signing, showed [HIS/HER/THEIR] original signature to each of us and acknowledged to us that it is [HIS/HER/THEIR] original signature and that [HIS, HER, THEIR] will reflects [HIS, HER, THEIR] wishes, and asked us to sign the instrument.

**WITNESSES’ NAMES WITNESSES’ ADDRESSES**

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| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of Witness 1 | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Street Address |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name of Witness 1 | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  City State Zip Code |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of Witness 2 | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Street Address |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name of Witness 2 | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  City State Zip Code |