

****Do not remove the staples after signing the LW&T – this could invalidate the LW&T.****

EXECUTING THE LAST WILL & TESTAMENT

STEP 1: REVIEW THE WILL

Make sure the names and addresses for everyone named in the Will are correct. Review the Will to ensure it reflects your client's wishes and your client understands its contents. If your Will does not reflect your client's wishes or your client does not understand its contents, **do not write on it or make any corrections with pen or Wite-out®**. If corrections are needed those changes need to be made by word processor.

You should print and staple the Will and the affidavit of attesting witnesses together before it is signed.

STEP 2: GET THE WITNESSES READY

Option 1: Bring two witnesses who are 18+ and competent into physical proximity (they need to be able to see the client sign).

Option 2: If witnesses are not present when the client signs, the client will need to show their signature to two witnesses separately within 30 days of signing. Skip Step 3 and go to Step 4.

You should **not** have a beneficiary serve as a witness.

STEP 3: HAVE THE CLIENT VERBALLY ACKNOWLEDGE THE WILL

Ask your client the following questions:

1. What is this document?
2. Whose Will is this?
3. Have you read this Will?
4. Does this Will express your wishes?
5. Would you like for [Witness 1] and [Witness 2] to witness your Will?

STEP 4: EXECUTE THE WILL

Have the client sign their name, or direct someone else to sign their name, on the signature line at the end of the body of the will. If someone else signs for the client, they should complete an Affidavit of Signing.

If the witnesses are present, they should immediately sign, date, and insert their (personal or business) addresses on the following page.

If the witnesses are not present, within 30 days of signing, the client will need to show their signature to two witnesses (they don't have to be together), recite the language "This is my Last Will and Testament. I have read its contents. It reflects my wishes. I would like [state the name of the witness/witnesses] to witness my Will," and have the witness/witnesses sign, date, and enter their address.

STEP 5: KEEPING THE WILL SAFE

Only the original Will is effective in court. Make copies to give to the Executor and anyone else the client wants to have a copy but ***do not remove the staples***. Your client should store the original in a safe and easily accessible space. Your client may give it to their Executor, retain it themselves, or file it with the Surrogate's Court in their county for safekeeping for a fee. Your client should not keep their Will in a safe deposit box, as such a box will be sealed upon their passing. If in the future your client needs to update their Will, they may contact the VOLS Senior Law Project at (347) 521-5704.

HAVING THE WITNESSES TO THE WILL EXECUTE AN AFFIDAVIT OF ATTESTING WITNESSES

STEP 1: REVIEW THE AFFIDAVIT

Make sure your client's name, address, and other information contained in the Affidavit is correct.

STEP 2: ASK THE WITNESSES TO SIGN BEFORE A NOTARY

The client does not sign the Affidavit of Attesting Witnesses – the witnesses should sign in the physical presence of a notary.

If the witnesses are physically present when your client signs the Will and a notary is present, the witnesses should sign the Affidavit and the notary should notarize it now. Affix this document to the end of the will *after* the witness signature page. Ideally it should be affixed prior to the client signing the Will to reduce the risk of a staple error causing risk of invalidation of the will during probate.

Affixing the affidavit to the will:

You should staple the affidavit of attesting witnesses to the Last Will before you have the client sign and then just fold over the pages when scanning and copying. For the other documents you may leave them un-stapled so scanning is easier. Please send the scans to VOLS.

It is only with the will that we staple first because if the client signs and then the stapler catches and must be pulled out and re-stapled then the will is at risk of being deemed invalid by the Surrogate's Court, so we just staple first to avoid the risk of having to resign.

If the witnesses are not present when your client signs your will, both of the witnesses should sign in the presence of a notary at some point before the will is submitted to the court to be probated.

EXECUTING THE POWER OF ATTORNEY

STEP 1: REVIEW THE POA

Make sure the names and addresses for your client and the agent/s are correct.

STEP 2: PREPARE THE NOTARY AND WITNESSES

A **notary** should be within physical proximity – they have to be close enough to be able to see the client sign. You must also obtain the signatures of **two witnesses** – people of suitable age (we recommend 18 or older) and competent. Witnesses can be present at the time the client signs, or you can obtain their signatures within 30 days.

The people named as the agent/s and/or backup agent/s cannot act as a witness or the POA will be invalid.

STEP 3: EXECUTE THE POWER OF ATTORNEY

The client should initial and sign their POA themselves. If your client is not able to write their initials and/or sign due to physical disability, they may ask someone else to initial and sign on their behalf in their presence. If someone else is signing for your client, they should sign by writing or printing the client's name, and printing and signing their own name as well. That person should also complete an Affidavit of Signing.

Your client should write **initials only** - not “√” or “X” or their name - on each line in parentheses to the left of each power they wish to give to their agent/s.

You and your client should have already determined which lines of Sections (b) through (i) that they should initial. Note that if your client initials the second to last modification, you must write the name of the agent/s your client wishes to authorize to make gifts to themselves if you did not type this in already.

After your client has initialed the appropriate lines, signed and dated under **Section (m)**. Your notary should now notarize the power of attorney.

STEP 4: AGENT EXECUTION, DISTRIBUTING COPIES, AND SAFEKEEPING

Any and all persons named as agent/s must sign the appropriate lines under **Sections (p) and (q)** in the presence of a notary. Agents do not have to sign on the same day or at the same location as your client and they do not have to sign on the same day or at the same location as each other. **The agents will not have the legal authority to act on your client's behalf until they have signed the POA in the presence of a notary.**

Your client should store their original POA in a safe and easily accessible space. They should provide copies to their agent/s, banks, and anywhere else a transaction may

occur on their behalf. If in the future your client needs to revoke their POA, contact the VOLS Senior Law Project at (347) 521-5704.

EXECUTING THE HEALTH CARE PROXY

STEP 1: REVIEW THE HEALTH CARE PROXY

Make sure your client's name, address, and phone number are correct. Make sure the names, addresses, and phone numbers of the agent (and successor agent if there is one) are correct. Make sure all other information is correct and reflects your client's wishes.

If anything needs to be fixed, stop now and correct with a word processor before proceeding.

STEP 2: PREPARE FOR EXECUTION

Two witnesses must be close-by enough to see your client sign. Witnesses must be at least 18 years old and competent, and neither of them can be named as an agent or successor agent in the Health Care Proxy.

You **do not** need a notary.

STEP 3: EXECUTE YOUR HEALTH CARE PROXY

In **Section (5)**, your client should sign and date, or direct someone else to sign their name and date on the Health Care Proxy. If someone else signs for your client, they should complete an Affidavit of Signing.

In **Section (6)**, if your client will be donating any organs/tissues (you should discuss this with your client beforehand), have your client sign and date, or direct someone else to sign their name and date the appropriate lines. If someone else signs for your client, they should complete an Affidavit of Signing.

Then, the witnesses should date, write out their name, sign, and provide their addresses and (personal or business) on the appropriate lines in **Section (7)**.

STEP 4: PROVIDE COPIES OF THE HEALTH CARE PROXY

Your client should give a copy of their Health Care Proxy to their agent and successor agent (if you have one). They should also give a copy of the document to each of their primary health care professionals.

EXECUTING THE LIVING WILL

STEP 1: REVIEW THE LIVING WILL

Make sure your client's name, address, and phone number are correct. Make sure all other information is correct and reflects your client's wishes. You and your client should determine beforehand which lines should have an "X" typed next to them and which ones should not.

If anything needs to be fixed, stop now and fix with a word processor before proceeding.

STEP 2: PREPARE FOR EXECUTION

Two witnesses must be close enough to see your client sign. Witnesses must be at least 18 years old and competent.

You do **not** need a notary.

STEP 3: EXECUTE THE LIVING WILL

Your client will sign and date the appropriate lines on page 2.

Then, the witnesses should date, sign, and print their names and addresses (business or personal) on the appropriate lines on page 2.

STEP 4: PROVIDE COPIES

Your client should give a copy of their living will to their agent/s under your health care proxy (if you have one). They should also give copies to their primary health care professionals.

EXECUTING THE APPOINTMENT OF AN AGENT TO CONTROL DISPOSITION OF REMAINS (AKA “CONTROL OF REMAINS” FORM)

STEP 1: REVIEW THE CONTROL OF REMAINS FORM

Make sure your client’s name, address, and phone number are correct. Make sure the agent’s name, address, and phone number is correct. Make sure all other information is correct and reflects your client’s wishes. You and your client should determine beforehand which lines should have an “X” typed next to them and which ones should not.

If anything needs to be fixed, stop now and fix with a word processor before proceeding.

STEP 2: PREPARE FOR EXECUTION

Two witnesses must be close-by enough to see your client sign. Witnesses must be at least 18 years old and competent.

You do **not** need a notary.

STEP 3: EXECUTE THE CONTROL OF REMAINS FORM

Your client should enter the date and sign, or have someone else sign their name and date the appropriate lines on page 2. If someone else signs on your client’s behalf, they should also sign an Affidavit of Signing.

Then, the witnesses should sign, print their names, and write their addresses on the appropriate lines on page 3.

STEP 4: CLIENT SHOULD PROVIDE THE ORIGINAL TO THE AGENT

The client should maintain a copy and provide the original to their agent. They should instruct their agent *not* to sign until after they, the client, has passed away. The agent will not have any authority to act under this document until after the client has passed away and the agent has signed and dated page 4.

EXECUTING A STANDBY GUARDIANSHIP

STEP 1: REVIEW THE STANDBY GUARDIANSHIP

Make sure your client's name, address, and the name and address of the guardian are correct. Make sure all other information is correct and reflects your clients' wishes.

If anything needs to be fixed, stop now and fix on word processor before proceeding.

STEP 2: CONNECT TO YOUR WITNESSES

Two witnesses must be close-by enough to see your client sign. Witnesses must be at least 18 years old and competent.

You do **not** need a notary.

STEP 3: EXECUTE THE STANDBY GUARDIANSHIP

Your client will enter the date and sign their name on the appropriate lines on page 2. Then, the witnesses should sign, print their names, and write their addresses on the appropriate lines on page 3.

STEP 4: PROVIDE COPIES

Your client should keep the original and give copies to their agents.

HAVING YOUR CLIENT'S SPOUSE EXECUTE THEIR WAIVER OF SPOUSAL ELECTION

STEP 1: REVIEW WAIVER

Make sure your client and your client's spouse's names are correct. Make sure all other information is correct and reflects your client's wishes.

If anything needs to be fixed, stop now and fix on a word processor before proceeding.

STEP 2: NOTIFY YOUR CLIENT

Once your client has confirmed that all information contained in the waiver is correct, contact your client and tell them that you are going to send the waiver to their spouse.

STEP 3: SPOUSE SIGNS AND RETURNS ORIGINAL EXECUTED WAIVER

The spouse should sign before a notary and send the original executed waiver either back to the client or to you.

STEP 4: KEEPING THE WAIVER SAFE

It is a good idea to make copies of this waiver. Have the client store the original with the original executed Will in a safe and easily accessible space. If the client is giving the original Will to your Executor, the client may give the waiver to the Executor. The client may also retain it for themselves. The client should not keep this waiver in a safe deposit box, as such a box will be sealed upon their passing.