NEW MEXICO LAW REVIEW

Volume 8
Issue 2 *Summer 1978*

Summer 1978

# The Family Legal Check-up: A Guide to Planning and Drafting Wills for Middle-Income Couples with Minor Children

Thomas L. Popejoy Jr.

Recommended Citation
Thomas L. Popejoy Jr., *The Family Legal Check-up: A Guide to Planning and Drafting Wills for Middle-Income Couples with Minor Children*, 8 N.M. L. Rev. 171 (1978).
Available at: https://digitalrepository.unm.edu/nmlr/vol8/iss2/3

This Article is brought to you for free and open access by The University of New Mexico School of Law. For more information, please visit the *New Mexico Law Review* website: www.lawschool.unm.edu/nmlr

# THE FAMILY LEGAL CHECK-UP: A GUIDE TO PLANNING AND DRAFTING WILLS FOR MIDDLE-INCOME COUPLES WITH MINOR CHILDREN

By THOMAS L. POPEJOY, JR.*

Every so often the phone in my office will ring and a male voice on the other end will say, "How much do you charge for a simple will?" After chatting with the person for a few moments, I discover the caller is 35 years old and has a wife and two minor children. When I ask him about his assets, he responds, "Oh, we just have a house, two cars, and our personal items. Nothing fancy. We're just average folks."

My caller and his family are fairly representative of a large portion of America's population. Although he and his spouse want just "simple" wills, they need a "family legal check-up"–a counseling and planning session followed by preparation of properly drafted wills and adjustment of asset titles and life insurance beneficiary designations.

Let us call our typical young couple John and Leslie Baker. Married for eleven years now, they have two children, John, Jr., nine, and Julie, five. John is a systems engineer at a local electronics firm and Leslie works part-time as a nurse at one of the local hospitals. John earns $20,000 a year before taxes, and expects incremental raises from his employer.

After asking John a few questions about his family and assets, I convince him that he needs something more than a two-page will. I ask that he and his spouse come in for an interview and that he bring with him his house papers, insurance policies, savings passbooks, car titles, and other documents evidencing ownership. John agrees, and a date is set.

On the appointed day, John and Leslie arrive with their satchel full of papers. After going through their documents with them and discussing their assets, I find that their "estate" looks as follows:

1. Checking Account with an average balance of about $300 and savings account of $1200, each designated "John *or* Leslie Baker."
2. Residence purchased during marriage, currently valued at $42,000, held in both names as joint tenants, and subject to a $32,000 mortgage at a local savings and loan.

*Member, State Bar of New Mexico; J.D., University of New Mexico, 1971.

3. Two automobiles held jointly and miscellaneous personal effects and clothing valued at $8,000, all purchased during marriage.
4. Two life insurance policies on John's life, one a group-term policy provided by John's employer with a face value of $30,000 and another a one-year renewable term policy purchased by John individually (but during marriage) with face amount of $100,000. John has designated Leslie as primary beneficiary and his two children as contingent beneficiaries on both policies.

John and Leslie are not in need of "Estate Planning" in the usual sense of that phrase because no estate tax will be payable upon either John's or Leslie's death.[1] They are however in need of what Thomas Shaffer calls "non-estate planning."[2] The goal of such planning is not tax savings or avoidance, but rather assurance that the family assets, including life insurance, will pass according to the Baker's desires in a way that will reduce expense and inconvenience to a minimum.

John and Leslie should see a lawyer about their non-estate planning for several reasons. First, by proper arrangement of asset titles and insurance beneficiary designations, the estate of the first of them to die can pass to the survivor without probate and its attendant expense and delay. The lawyer's function here is to examine John and Leslie's deeds, car titles, bank accounts, and insurance policies and determine whether the titles to those assets are held in joint tenancy and whether Leslie is designated as primary beneficiary on John's life insurance policies. If the asset titles and insurance beneficiary designations are so arranged, when either John or Leslie dies, the survivor will immediately own all the property without need for a probate proceeding. In New Mexico, the only legal steps indicated following the first death are (1) obtaining an Estate Tax Certificate from the New Mexico Bureau of Revenue showing no tax due and (2) recording that Certificate along with a death certificate in the county or counties in which John or Leslie own real estate. Twenty minutes of the lawyer's time examining these documents and policies

---

1. Assuming that all property and insurance proceeds will be considered community property and that the total value of John and Leslie's community estate is no more than $150,000, the estate of the first of them to die will be valued at $75,000. No federal estate tax is payable on an estate of that size. I.R.C. § § 2001, 2010. Assuming the surviving spouse receives all the decedent's property, lives for 10 or more years longer and conserves all the property of both of them, that surviving spouse's estate would total $150,000. After 1979, no federal estate tax would be due on the survivor's estate. *Id.* The New Mexico Estate Tax Act, N.M. Stat. Ann. § § 72-33-1 to 12 (Supp. 1975, Int. Supp. 1976-77), provides that the New Mexico estate tax shall be an amount equal to the credit for state death taxes allowed by I.R.C. § 2011. If no federal estate tax is due, no credit for state death taxes will be imposed and thus no New Mexico estate tax will be due.
2. T. Schaffer, The Planning and Drafting of Wills and Trusts 59-123 (1972).

can save hundreds of dollars of expense and prevent much delay and inconvenience at the death of one of the spouses.

The second reason that John and Leslie need non-estate planning is that without a designation of guardianship in their wills, a court will appoint a guardian for their children based on the court's knowledge at the time. The conference with the lawyer gives John and Leslie the chance to consider carefully who they wish to raise their children in the event both die while some or all of their children are minors. The will drafted by the lawyer, containing an appointment of guardians, assures that the children will be raised by the persons designated by John and Leslie.

The third reason for non-estate planning also arises out of the possibility that both John and Leslie die while their children are minors. Should both John and Leslie die intestate, all real estate, stocks, and life insurance proceeds, plus any valuable personal property, would have to be placed in a conservatorship for the children through a court proceeding.[3] John and Leslie would have no say over who is the conservator, and their estate would incur substantial expense in paying attorneys' fees and costs to establish the conservatorship. Moreover, conservatorships are public proceedings and the current statutes require yearly accountings.[4] The conservator is bound by rules of fiduciary duty and may charge a fee. In short, a conservatorship is cumbersome, expensive, public, inflexible, and, most important, unnecessary. By creating a testamentary trust to receive their property, John and Leslie can choose the trustee, avoid any court proceedings to establish a trust, give the trustee all the discretion needed or desired, waive yearly accountings, and avoid any public knowledge of the management and distribution of the trust assets.[5] By choosing a trustee who is both compassionate and smart about money, the Bakers can insure that the children will be taken care of.

The fourth reason for John and Leslie to engage in non-estate planning is that it forces them to "take stock of themselves" and think about their current situation and the situation after their deaths. Most of us avoid thinking about death and many of us are not meticulous about our own affairs. A lawyer is doing his clients an important service by advising them to keep records of major expenditures, to file important papers in an orderly fashion in some central place and to review their assets from time to time. When preparing

3. *See* N.M. Stat. Ann. §§32A-5-401 to 432 (Int. Supp. 1976-77).
4. N.M. Stat. Ann. §32A-5-419 (Int. Supp. 1976-77).
5. N.M. Stat. Ann. §32A-5-414 (Int. Supp. 1976-77).

for a will interview, clients often discover ancillary problems with their assets, insurance or other financial matters which otherwise would have gone unnoticed.

*A. The Interview*

A will interview is normally considered a meeting between lawyer and client during which the lawyer gathers information sufficient to draft a will for the clients. The fact-gathering function of the family check-up interview is of course important, but other aspects of the interview are equally important. The client must make choices (who will be the guardian of the children; who will be the trustee of the children's money) and the lawyer must assist the client in implementing his choices. While the fact-gathering portion of the interview is likely to be a question and answer session, the choosing and decision-making portion involves interaction and interchange, with the lawyer suggesting legal ways to carry out the client's desires. In discussing the decision-making aspects of the interview, Shaffer says:

> Decision making is a much more active role for the professional than counseling is. His expertise and guidance and information are all needed here; but they are relatively useless when the client has tough human *choices* to make.[6]

Shaffer's final phrase about "tough human choices" raises an important point about the provision of legal services generally. Basic choices about how to proceed, who will receive property, and who will care for the children must be made by the client. The lawyer has no business impressing his personal feelings about such choices on the client. This is not to say, however, that a lawyer may not or should not point out possible pitfalls arising out of the client's choices. For example, if a client wishes to disinherit a child, the lawyer may appropriately point out that the child may contest the will. Nevertheless, the final choice of whether to include the child is the client's.

Because the client has important decisions to make during the interview, the lawyer should endeavor to provide an atmosphere of freedom and acceptance. Lawyers operate from a position of tremendous personal power. Most people fear lawyers to some extent, and many also fear appearing foolish before the learned professional. A few principals of good interviewing:

1. Try to exercise as little control as possible over the process of

6. T. Schaffer, *The "Estate Planning" Interviewer,* in Estate Tax Techniques xlviii (J. K. Lasser Tax Institute ed. 1973).

the interview. A lawyer who overbears will stifle the client's thinking process and will likely cause the client to omit some fact or idea that he would otherwise have mentioned. It is well to begin will interviews by asking, "What do you want your will to do," or "Tell me what you have in mind." The use of an information-gathering form and a check-list facilitates an uncontrolled interview. Blanks may be completed in any order, and toward the end of the interview, the lawyer can review his form for missed items of information and topics not discussed.

2. Be empathetic and non-evaluative. Examine yourself and your motives to determine whether you feel superior to the client or dislike him for some reason. Remind yourself that you and the client are both human beings perhaps with roughly equal faults, defects, and occasional tendencies toward excess.

3. As the interview progresses, listen carefully and attentively, and observe the client's reactions, facial expressions and comments. Most adults can sense whether a person is really listening to them, and if they discover a good listener, they will tend to relax and open up.

Successful interaction with people is an essential part of the practice of law. If the interview with the client is open, non-evaluative, and non-directive, the lawyer will not only glean more facts, but will also enjoy the client's gratitude for having facilitated his ability to communicate. Of course, a lawyer must exercise some control over the interview. If a client begins to digress or ramble, for example, a slightly leading question from the lawyer to get the client back on the track is both useful and appreciated by the client. In general, however, a free open interview is both more pleasant and more successful.

### *B. Necessary Information*

In order for the lawyer properly to perform his or her role in the family check-up, he or she must garner a fairly substantial quantity of information from the client. Appendix A of this article contains a "Master Information List" or "M.I.L." which includes a check-list of items to cover with the client. Use of M.I.L.'s and check-lists is not only convenient and helpful, but also important to one's competence as a lawyer. The more experienced one becomes in a given field, the more likely one is to omit items from a discussion. A good M.I.L. and check-list, used properly, will prevent omissions and ensure that the bases are covered every time. Reliance on check-lists also eases the mind. The user need not worry whether he or she has covered the subject completely.

1. *Asset Values.* Estimating the value of the client's assets is of primary importance. Each asset should be carefully discussed with attention given to the basis and market value and any debts against it. A good estimate of the value of the total estate determines whether the client needs any estate tax planning. In addition, the average client has never seriously added up the values in his estate, and may find himself surprised at how much he is worth dead. Many clients, moreover, do not realize that life insurance proceeds are included in the gross estate for federal estate tax purposes. If John Baker owned an additional $100,000 life insurance policy, he or Leslie could have a taxable estate.[7] When discussing asset values with a client, it is well to mention that the assets will probably increase in value, and that he should review his asset values periodically to determine whether he has acquired an estate subject to estate tax problems.

2. *Status of Asset Titles.* Each document evidencing ownership of an asset should be examined carefully to determine how the clients hold the asset. Make copies of the various title documents for a permanent reference. Date of purchase is an important item of information here, because that date can determine whether the property is community or separate. For clients such as John and Leslie Baker, all property except life insurance policies should be held in joint tenancy with right of survivorship. Wealthier clients normally should *not* hold property in joint tenancy.[8]

Many clients will express dismay and irritation at having to gather up all their documents. Do not weaken. Insist that they bring in all such documents. Only a lawyer can determine that property is held in the desirable form.

3. *Life Insurance Policies.* These should be examined carefully to determine face amount, type, ownership, policy loans, and beneficiary designations. Pension and profit sharing plans should be similarly examined with special attention given to death benefits and pay-out plans. Life insurance proceeds and lump sum pension plan death benefits are includable in a decedent's gross estate for federal estate tax purposes, so a complete list is essential for giving competent advice.

4. *Other Information.* Several other areas should be covered during the interview to insure that no surprises arise later. The lawyer

---

7. *See* note 1, *supra.* With $100,000 more life insurance, John and Leslie's total estate would be about $250,000. If John died first leaving everything to Leslie, and Leslie later died having survived John by 10 years and preserved all the assets and insurance proceeds, her estate would be liable for federal estate tax of $21,400. I.R.C. § § 2001, 2010.

8. *See* text accompanying note 15, *infra.*

should inquire whether either spouse has ever been previously married, and if so (or in any event) whether either spouse has other children. If either client has been previously married, a copy of any divorce decree should be obtained so that the lawyer may determine if the previous spouse or children have any rights against the income or assets. If either spouse is a beneficiary of any trust or other fiduciary arrangement, or if either expects to inherit substantial property from a relative in the near future, such facts should be taken into consideration.

*C. Planning the Will*

At some point in the interview, the lawyer should ask John and Leslie what they want their wills to say. Most clients in their situation will say they want to take care of each other first, and in the event of a common disaster or upon the death of the last of them, they want their children to have the benefit of their estate. In their minds they see a short and simple will saying, "I give my entire estate to my spouse if she survives me, or if she does not survive me, I give my entire estate to my children in equal shares." What they do not realize is that if any of their children are minors when they both have died, a will such as the foregoing necessitates creating a conservatorship to receive the property in their estates. The disadvantages of conservatorships have already been mentioned.

After assuring the clients that their will can give all property to the surviving spouse, the lawyer should explain the disadvantages of conservatorship and recommend that their will set up a testamentary trust for the benefit of the children. When the survivor dies all their property and their life insurance proceeds can be paid into the trust and managed by a trustee rather than a conservator. The trustee can be a family member, older child, a bank, or other appropriate person. A family member will probably not charge a fee, and on the whole a trust is a more flexible management vehicle than a conservatorship.[9] Because the will appoints the trustee, John and Leslie can be sure that the person or entity they consider most appropriate will manage their money for the children's benefit. Finally, the trust can require that the principal be held until the children reach any given age, as opposed to a conservatorship which is terminated when the children reach age 18. Clients particularly appreciate this feature of a testamentary trust; they know that even the most mature of children will have trouble managing substantial quantities of money at age 18. Age

9. The duties and liabilities of trustees are set forth in N.M. Stat. Ann. §§32A-7-301 to 307 (Int. Supp. 1976-77).

23 is a good minimum age of distribution. Again, however, the final choice is the client's.

The client must also choose guardians to raise the children. The clients should consider designating the same person as guardian and trustee. Assuming that the proposed person is both trustworthy and competent, he or she will be appointed and will then manage both the children and the children's assets.

The clients must also decide whether they wish each child's share to go to that child's children if that child pre-deceases them. An important consideration here is whether the clients wish to give anything to the *spouse* of their child if the child has died by the time the trust is distributed. Many people do not wish to include spouses of children, but some do. In any event, the matter should be addressed. Lastly, the clients need to choose personal representatives and ultimate recipients of their estates in the unlikely event that they and their children and grandchildren meet an untimely demise.

Appendix B of this article contains a suggested will form for clients such as John and Leslie Baker. Note that the form gives the testamentary trustee broad discretion over income and principal during the term of the trust, and that the youngest child must reach age 23 before the trust is distributed.[10]

Sometimes clients want to force the trustee to treat their children "equally." Children, however, are not equal and generally the trustee should have the broadest possible discretion in spending money for the children's benefit. Another somewhat common request is that the estate be divided into separate trusts, one for each child. Such trusts are cumbersome, and a situation could arise where most or all of the entire available trust estate is needed for one child's disability or problem. The choice is ultimately the client's, but with estates like John and Leslie Baker's, separate trusts should be avoided.

*D. Other Items*

1. *Personal Effects.* The will form in Appendix B contains a provision regarding personal effects. These are handled separately because (1) such effects are usually passed informally and (2) no docu-

10. The testamentary trust form contained in Appendix B does *not* meet the requirements of I.R.C. § 2057. This provision, added by the Tax Reform Act of 1976 and amended by the 1978 Revenue Act, allows a limited deduction from the gross estate for property passing to a child under 21 years old if the decedent has no surviving spouse. Although § 2057(d) now provides for a "qualified minors' trust" somewhat similar to the trust form in Appendix B, this author is reluctant to use a trust form purporting to qualify under § 2057(d) until regulations have been issued clarifying its provisions. Inasmuch as § 2057 becomes important only if the decedent's estate will be liable for federal estate tax, it is not a matter of great concern for clients such as John & Leslie Baker.

ments of title exist for them. The provision in Appendix B is reasonably self-explanatory. Note, however, the last paragraph, which is included to take advantage of Section 32A-2-513 of the Probate Code.[11] That section states:

> A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be:
> A. referred to as one to be in existence at the time of the testator's death;
> B. prepared before or after the execution of the will;
> C. altered by the testator after its preparation; or
> D. a writing which has no significance apart from its effect upon the dispositions made by the will.

The quoted section allows testators to provide for the disposition of tangible personal effects by means of a handwritten list apart from the will. The testator may therefore change the list without modifying his or her will and may avoid cluttering up the will with endless designations of personal minutiae.

2. *Other Insurance.* A complete family legal check-up should include a review of the client's insurance other than life insurance. While most people have automobile, homeowner's and health insurance, many have not considered disability income insurance or credit life insurance against the house mortgage or other debts.

3. *Personal Records.* Many clients are rather casual about their personal files and records. The lawyer should therefore discuss the importance of keeping good records in an organized fashion. When someone dies the surviving members of the family will have a much easier time if the decedent kept good records of asset purchases (including original cost, improvements, and repairs), financial statements submitted to banks or for other purposes, income tax returns, life insurance policies, receivables and payables, other insurance policies, information used in preparation of income tax returns, and gifts.

4. *Estate Liquidity.* When going over the assets and life insurance of the clients, the lawyer should determine approximately how much cash will be available at the death of each spouse. While the husband

11. N.M. Stat. Ann. (Int. Supp. 1976-77).

usually has life insurance, most couples have not considered cash needs at the death of the wife. A small life insurance policy on the wife can eliminate any problem in this regard.

5. *Retirement.* If the clients have no pension or profit-sharing plan through their employers, they should consider an individual retirement account or other retirement plan. A life insurance policy which accumulates cash value can serve the same purpose, as can a simple savings account.

6. *Investment Priorities.* Clients like John and Leslie Baker often ask what types of investments they should make when they are able to accumulate some extra cash. One possible answer is that a family should accumulate a savings account of $5,000 or so, and then begin to accumulate equities in listed securities, real estate, or other assets. Obviously the choice of equity investments should be made very carefully, taking into account risk, rate of return, expenses of ownership, and possibility for growth. A suggestion that the clients speak to a stock broker, bank investment officer, or other expert about the problem is always provident. A lawyer cannot replace a competent investment advisor, but the topic of investments is appropriate for the family legal check-up.

7. *Documents Under the Right to Die Act.* In 1977, the New Mexico legislature passed the "Right To Die Act."[12] This act provides that anyone over the age of 18 may sign a document directing that "if he is ever certified under the Right To Die Act as suffering from a terminal illness then maintenance medical treatment shall not be utilized for the prolongation of his life." The document must be signed with the same formality required for a valid will. Certification under the act means that two physicians must state in writing that the individual is terminally ill. Clients generally have concerns in this area, so the Right To Die Act is appropriate for discussion. By signing such a document, the client largely relieves the spouse of the heavy responsibility for making the decision whether to tell the physician to "pull the plug" or to continue costly, perhaps painful, but useless therapy.

8. *Disposition of Remains.* Most people, especially the elderly, have questions about how to assure that their remains will be disposed of as they wish. The best course is simply to tell their family and friends what they want done. Directing disposition of remains in one's will is virtually useless because the will is normally not read until after the funeral.

---

12. N.M. Stat. Ann. §§12-35-1 to 11 (Int. Supp. 1976-77).

*E. Integration of Assets and Life Insurance*

Unless the lawyer advises the clients on how to arrange their asset titles and life insurance beneficiary designations, the most beautifully drafted will in the world may be totally irrelevant. Clients like John and Leslie Baker should hold all their assets in joint tenancy so that when one of them dies, the other will own all the assets without having to incur the expense, inconvenience, and delay of a probate proceeding.

Similarly, life insurance policies should be made payable to the surviving spouse as primary beneficiary. The proceeds will then pass directly to that surviving spouse by contract without probate.

One side advantage of joint tenancy ownership is that property so held cannot be used to satisfy creditors' claims against the estate of the first decedent to die until all other assets have been exhausted.[13] Likewise, life insurance proceeds made payable to a specific person or trustee pass outside the estate of the insured decedent and thus avoid creditors' claims.[14]

There is one disadvantage to joint tenancy ownership. Under I.R.C. § 1014 (as amended by the 1978 Revenue Act), the assets of a decedent dying before January 1, 1980, receive a step-up in basis to the value of those assets at decedent's death.[15] When spouses own assets as community property, upon the death of the first spouse to die, *both the decedent's and the survivor's share* of the community property receive a step-up in basis. I.R.C. § 1014(b)(6). However, if the spouses own assets as joint tenants, only the decedent's one-half interest receives the step-up in basis. This is because New Mexico law defines a spouse's share of property held in joint tenancy as that spouse's separate property.[16] If a couple's residence has a basis which is far below its market value, and if the surviving spouse plans to sell the residence shortly after the other spouse's death, the couple may be better off financially if the residence is held as community property.

Assuming that John and Leslie Baker want a will such as that set forth in Appendix B, the contingent beneficiary of life insurance policies on both their lives should be the "testamentary trustee under the will of the insured." With such a designation on John's insurance policies, if he died after Leslie, his insurance proceeds would be paid directly to the trustee for his children, thus avoiding his probate

13. N.M. Stat. Ann. § §32A-2-804, 32A-6-107(A) and (B) (Int. Supp. 1976-77).
14. *See* N.M. Stat. Ann. §32A-6-201 (Int. Supp. 1976-77).
15. I.R.C. §1023.
16. N.M. Stat. Ann. §57-4A-2.A.(6) (Supp. 1975).

estate and its creditors. While a probate proceeding would be required to pass John's other assets into the trust for his children, his designated testamentary trustee could be qualified quickly and receive the insurance proceeds shortly after John's death. The trustee could then begin caring for the children immediately, without having to wait for the conclusion of the probate.[17] If John leaves his insurance beneficiary designations as it stands now—simply "my children" —the insurance companies will pay nothing until a conservator has been appointed and qualified.

Most clients can take care of insurance beneficiary designations without a lawyer's help. However, if real estate or securities are not held in joint tenancy between the spouses, and if their estate plan indicates joint tenancy ownership, the lawyer should assist in transmuting the titles into joint tenancy. Real estate can be transmuted into joint tenancy by means of a deed from the spouses to themselves as joint tenants. Such a deed is explicitly allowed by statute.[18]

## APPENDIX A

______________ Client

______________ Attorney

Will System

Master Information List

| | |
|---|---|
| 1. | TESTATOR (1) |
| a. | Full Name______________ Occupation______________ |
| b. | Address______________ ZIP______ |
| c. | Age______ Health______ Soc. Sec. No.______________ Phone______ |
| 2. | TESTATOR (2) |
| a. | Full Name______________ Occupation______________ |
| b. | Address______________ ZIP______ |
| c. | Age______ Health______ Soc. Sec. No.______________ Phone______ |

17. *But see* T. Shaffer, *supra* note 2, at 71-74. Shaffer raises an apparent problem arising out of the fact that a testamentary trustee is not yet qualified to serve at the time a life insurance policy becomes payable—the moment of death. However, as a practical matter, a testamentary trustee can be qualified within 30 days after the date of death, which will be soon enough for even the most prompt insurance companies. The technical legal problems which may seem to exist do not, in this author's opinion, merit scrapping the testamentary trust as a receptacle of life insurance proceeds.

18. N.M. Stat. Ann. § 70-1-34.1 (Supp. 1975).

| | |
|---|---|
| 3. | CHILDREN |
| a. | Name ________ Birth Date ________ |
| b. | Name ________ Birth Date ________ |
| c. | Name ________ Birth Date ________ |
| d. | Name ________ Birth Date ________ |
| 4. | CHILDREN - Not of This Marriage |
| a. | Name ________ Whose ________ Birth Date ________ |
| b. | Name ________ Whose ________ Birth Date ________ |
| c. | Name ________ Whose ________ Birth Date ________ |
| d. | Name ________ Whose ________ Birth Date ________ |
| 5. | SPECIAL NEEDS OF DEPENDENTS<br>________<br>________<br>________ |
| 6. | GRANDCHILDREN |
| a. | Name ________ Child of ________ Birth Date ________ |
| b. | Name ________ Child of ________ Birth Date ________ |
| c. | Name ________ Child of ________ Birth Date ________ |
| d. | Name ________ Child of ________ Birth Date ________ |
| e. | Name ________ Child of ________ Birth Date ________ |
| f. | Name ________ Child of ________ Birth Date ________ |

FIDUCIARIES

| | NAME | IDENTIFICATION | POSITION |
|---|---|---|---|
| 7. | | | Personal representative |
| 8. | | | First successor personal representative |
| 9. | | | Second successor personal representative |
| 10. | | | Trustee |
| 11. | | | First successor trustee |
| 12. | | | Second successor trustee |
| 13. | | | Guardian of minor children |

FIDUCIARIES

| | | | |
|---|---|---|---|
| 14. | | | First successor guardian of minor children |
| 15. | | | Second successor guardian of minor children |
| 16. | | | Corporate co-trustee |
| 17. | | | First individual co-trustee |
| 18. | | | Second individual co-trustee |
| 19. | | | Successor to first individual co-trustee |
| 20. | | | Successor to second individual co-trustee |

21. ADDITIONAL INSTRUCTIONS TO FIDUCIARIES:

______________________________
______________________________
______________________________
______________________________

22. GIFT OF ESTATE - Personal Effects, Residence, Residuary Estate

a. Husband: b. Wife:

(1)____________ (1)____________
(2)____________ (2)____________
(3)____________ (3)____________

c. Age of Pay-out on Trust ___ ___ ___ ___ ___ Who Controls_______

23. ULTIMATE DISPOSITION TO OTHER THAN HEIRS AT LAW

a. Name__________ Ident.__________ Loc.__________

FINANCIAL DATA:

| 23. | PROPERTY - BANK ACCTS. & INV. | In Whose Name Held | Present Amount or Value | Who Will Get This Property |
|---|---|---|---|---|
| a. | Checking Accounts: | | | |
| | Bank__________ Acct. No.______ | | | |
| | Bank__________ Acct. No.______ | | | |
| | Bank__________ Acct. No.______ | | | |
| | Bank__________ Acct. No.______ | | | |
| b. | Savings Accounts: | | | |
| | Bank__________ Acct. No.______ | | | |
| | Bank__________ Acct. No.______ | | | |
| | Bank__________ Acct. No.______ | | | |
| | Bank__________ Acct. No.______ | | | |

FINANCIAL DATA (Cont.):

| | | | | |
|---|---|---|---|---|
| c. | Certificates of Deposit: | | | |
| | Bank | | | |
| | Bank | | | |
| | Bank | | | |
| | Bank | | | |
| d. | Stocks and Bonds: (name, type, No. of Shares) | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| e. | Business Interests: (partnerships, corp., etc) | | | |
| | | | | |
| | | | | |
| | | | | |

| 24. | PROPERTY - REAL ESTATE | In Whose Name Held | Cost Basis | Present Value | Amount Owed | Equity | Who Gets |
|---|---|---|---|---|---|---|---|
| a. | Residence: (attach copy of Deed,Etc) Mtg. Ins.____ | | | | | | |
| | | | | | | | |
| | | | | | | | |
| b. | Other Real Est. | | | | | | |
| | | | | | | | |
| | | | | | | | |
| 25. | PROPERTY - HOUSEHOLD ITEMS | | | | | | |
| a. | Automobiles: (Make,model, year) Debt Ins.____ | | | | | | |
| | | | | | | | |
| | | | | | | | |

FINANCIAL DATA (Cont.):

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| b. | Jewelry: | | | | | | |
| | | | | | | | |
| | | | | | | | |
| c. | Art Objects: | | | | | | |
| | | | | | | | |
| | | | | | | | |
| 26 | PROPERTY - OTHER: | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| 27. | EMPLOYEE'S BENEFIT PLANS, EXPECTANCIES, & OTHER FUTURE VALUES, STOCKS | | | | | | |
| | | | | | | | |
| | | | | | | | |

| 28. | INSURANCE: | Type | Face Value Less Loan | Owner | Beneficiary |
|---|---|---|---|---|---|
| a. | | | | | |
| b. | | | | | |
| c. | | | | | |
| d. | | | | | |
| | | | | | |

TOTAL ASSETS: ________

29. DEBTS:

| | Creditor | Present Value | Amount Owed | Equity | Debt Ins. | Collateral |
|---|---|---|---|---|---|---|
| a. | | | | | | |
| b. | | | | | | |
| c. | | | | | | |
| d. | | | | | | |
| e. | | | | | | |
| f. | | | | | | |
| | | | | | | |

TOTAL LIABILITIES: ________

NET WORTH: ________

FINANCIAL DATA (cont):

CHECK LIST:

| | | | | |
|---|---|---|---|---|
| Review Docs. | Title to Prop. | Personal Records | Tax Matters | Valuation & Est. Growth |
| Prior Death of Wife | J.T. | Discuss Will | Estate | Personal Effects |
| Living Trusts | Comm. | Post Death Income | Gift | Retirement Needs |
| Pour Over | Separate | Post Death Cash | Income | Liability Ins. |
| Life Ins. | Legal & Acct. Advice | Rt. to Die Statement | Educational Needs | Auto & Sport |
| Incapacity | Gifts: | Disclaimers | Low Basis Assets | Home Owners |
| Other Ins. | Annual | | Funeral Arrangements | O-L-T |
| Health & Acc | Lifetime | | | Other |
| Life | Taxable | | | Unbrella |
| Disability | Durable Power of Atty | | | |
| Major Med. | | | | |
| Fire & Ext. Coverage | | | | |
| Other | | | | |

NOTES: ______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

## APPENDIX B

### *WILL OF JOHN JAMES BAKER*

### *I DECLARATIONS AND DEFINITIONS*

1. This is my will and I revoke all other wills.

2. My spouse is LESLIE JEAN BAKER and we have two children, JOHN JAMES BAKER, JR., and JULIE ANN BAKER.

3. The following terms are defined for the purpose of this will.

A. *"Child"* or *"children"* means both natural and adopted children, whether now living or born after the date of this will. Adopted children are included only if they were legally adopted when they were under 14 years old.

B. *"Survive me"* means that the person referred to must survive me by 30 days. If the person referred to dies within 30 days of my death, the reference to that person shall be construed as if that person had failed to survive me.

C. *"Heirs"* means those persons who are entitled under the New Mexico statutes of intestate succession to the property of a decedent except that adopted persons are included only if they were legally adopted when they were under 14 years old.

II
*APPOINTMENTS*

1. I appoint without bond:

| *NAME* | *IDENTIFICATION* | *POSTION* |
|---|---|---|
| LESLIE JEAN BAKER | My Spouse | Personal representative |
| DAVID W. BAKER | My brother of Albuquerque, New Mexico | First successor personal representative |
| DAVID W. BAKER | My brother of Albuquerque, New Mexico | Trustee |
| DAVID W. and SUSAN J. BAKER | My brother and his wife of Albuquerque, New Mexico | Guardians of minor children |

2. Successors shall fill the position indicated in the order stated only if the prior appointee does not qualify, is unable or unwilling to act, or resigns.

3. My personal representative shall have all the powers authorized by the New Mexico Probate Code. Administration of my estate shall be informal and unsupervised. All claims against my estate arising at or after my death and all taxes payable from my estate or by reason of my death shall be paid from my residuary estate without apportionment.

4. My trustee shall have all the duties, liabilities and powers contained in Article VII of the New Mexico Probate Code. In addition, my trustee has the power to make loans to, invest with, borrow from, or sell to, any person including (i) my personal representative or any beneficiary under this will, (ii) any business or investment venture of any beneficiary under this will, and (iii) any personal representative or trustee under the will of any beneficiary or the trustee of any inter vivos trust created by me or by any beneficiary under this will, whether or not my trustee also acts in that capacity. If the trust assets are divided into separate trusts, my trustee may treat the aggregate assets as one undivided fund for management and investment purposes and may, instead of physically segregating the assets, allocate any specific property, or any undivided interest in property, among the separate trusts. My trustee is specifically relieved of any duty to comply with forms of investments, requirements for diversification, or productivity of income, or law or statutes limiting the property which my trustee may acquire, invest, reinvest, exchange, retain, sell and manage including, but not limited to, Chapter 32A, Article VII, Part 3, N.M.S.A., as those statutes now read, or are amended.

III
*PERSONAL EFFECTS*

1. I give my spouse all my intimate and household effects of every kind (including household goods, furniture, furnishings and rugs, bric-a-brac, pictures, paintings, antiques, family heirlooms, objets d'art, books, jewelry, wearing apparel, glassware, silverware, china, linens, and hobby paraphernalia) and my personal vehicles, together with any insurance on any of this property, and my stock or memberships in any private clubs. If my spouse does not survive me, I give all this property to my children, to be divided by my personal representative among them as they shall agree; or, if they cannot agree within one year following my death, then all this property shall be divided among them in as nearly equal portions as may be practicable by my personal representative, in the absolute discretion of my personal representative.

2. If any child of mine entitled to receive any of this property is under 18 years old at the time of my death, I authorize my personal representative, in the absolute discretion of my personal representative, to retain this property for the child until the child becomes 18

years old, or to deliver all or any part of this property in kind to the child's guardian or conservator, or to the person with whom the child may reside or my trustee with directions to retain this property for the child until the child becomes 18 years old. The person in possession may store any of this retained property and all storage, insurance, and other carrying charges shall be charged as an expense of administration or of the residuary trust.

3. If none of my children survive me, this gift shall lapse and become part of my residuary estate.

4. My personal representative shall execute the instructions contained in any written statement or list made by me disposing of certain of my intimate and household effects to particular persons.

IV
*GIFT TO SPOUSE*

I give all my residuary estate to my spouse.

V
*RESIDUE IN TRUST*

If my spouse does not survive me, I give all my residuary estate to my trustee, IN TRUST.

1. *Income Payments.* My trustee may pay the net income of the trust estate at such times, in such amounts and in such manner as my trustee deems best, in the absolute discretion of my trustee, for the direct or indirect benefit of my children and the children of any child of mine. Any income not expended shall be accumulated and added to principal.

2. *Principal Payments.* My trustee may pay the principal of the trust estate at such times, in such amounts, and in such manner as my trustee deems best, in the absolute discretion of my trustee, for the direct or indirect benefit of my children and the children of any child of mine.

3. *Equality of Expenditure.* In making payments of income or principal to or for the benefit of any of my beneficiaries, my trustee is not required to observe any rule of equality of expenditure among those beneficiaries.

4. *Distribution.* When all my children become 23 years old, or sooner die, my trustee shall make final distribution of the balance of the trust estate in equal shares to those of my children then surviving; PROVIDED, HOWEVER, if a child of mine is deceased on the date of distribution, leaving children of my deceased child then surviving, then those children shall receive, in equal shares, the share of the trust estate my deceased child would have received had my deceased child survived. If all my children and all the children of my children are deceased on the date of distribution, then my trustee shall distribute the trust estate one-half to my heirs and one-half to my spouse's heirs, determined as if I and my spouse had then died.

5. *Retention and Distribution.* If any of the trust estate is to be finally distributed to a child of a child of mine who is under 18 years old, then my trustee shall retain that person's share of the trust estate and may pay such portion of that person's share which my trustee deems best, in the absolute discretion of my trustee, for the direct or indirect benefit of that person, and shall make final distribution of that portion of the trust estate to that person when that person becomes 18 years old or the the heirs of that person if that person does not reach that age. Any income not expended shall be accumulated and added to principal.

6. *Protection Provision.* No beneficial interest in either the income or principal of any residuary trust established under the provisions of this will shall be subject to anticipation, assignment, pledge, sale, or transfer in any manner, nor shall any beneficiary have the power

to anticipate, encumber or charge that interest, nor shall that interest, while in the possession of my trustee, be liable for or subject to the debts, contracts, obligations, liabilities or torts of any beneficiary.

DATED:____________________________________, 1978.

______________________________
JOHN JAMES BAKER, Testator

ATTESTATION CLAUSE

This will, consisting of 5 pages, this included, was signed by the above-named testator in the State of New Mexico, as and for the testator's will in the presence of us, who at the testator's request, and in the presence of each other, have signed our names as witnesses. We believe the testator has reached the age of majority and is of sound mind at this time.

WITNESSES:

______________________________ residing at ______________________________
Albuquerque, New Mexico

______________________________ residing at ______________________________
Albuquerque, New Mexico

SELF-PROVING WILL PROVISION

STATE OF NEW MEXICO )
) ss.
COUNTY OF BERNALILLO )

We, JOHN JAMES BAKER, ____________________, and ____________________, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's last will and that the testator signed willingly or directed another to sign for the testator, and that the testator executed it as the testator's free and voluntary act for the purposes therein expressed; and that each of the witnesses saw the testator sign and in the presence of the testator, at the testator's request and in the presence of each other, signed the will as witness and that to the best of our knowledge the testator had reached the age of majority, was of sound mind and was under no constraint or undue influence.

______________________________
JOHN JAMES BAKER, Testator

______________________________
Witness

______________________________
Witness

Subscribed, sworn to and acknowledged before me by JOHN JAMES BAKER, the testator, and subscribed and sworn to before me by ____________, and ____________, witness, this ____ day of ________, 1978.

______________________________
Notary Public

My commission expires: ____________________