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# A SIMPLE “SIMPLE” WILL

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The purpose of this Comment is to present a simple will form that is both sophisticated in substance and simple in form. The lawyer's substantive task—to provide a legally valid instrument disposing of the testator's property—is not especially difficult given the many adequate forms available. The task of simplifying the form—to provide a self-explanatory memorandum that the testator can understand<sup>1</sup>—is more difficult given the nature of the available forms. The authors' intent is, first, to provide a simplified will form in which every word is comprehensible to a lay client, and, second, to suggest ways of simplifying other types of wills. A will is a highly personal document. Not only should the testator understand it, but he or she should also be able to explain its contents to others, especially family members who may be affected by it. Even when lawyers try to draft simple wills, however, they often find it difficult to use clear, simple language.<sup>2</sup>

## I. BASIC PRINCIPLES

To draft this will form clearly and simply, the authors have relied on three fundamental principles of legal drafting: consistency, clear organization, and normal usage.<sup>3</sup>

“Consistency” refers to the consistent use of terms and phrases so that the same words are used to refer to the same concepts, and different words are used to refer to different concepts.

“Clear organization” refers to the structure of the whole, that is, to the arrangement of sections and subsections, and to the smaller organizational patterns of paragraphs and sentences.

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1. F. COOPER, *WRITING IN LAW AND PRACTICE* 337 (1963).

2. *Cf.* Committee on Estate Planning and Drafting: Small Estates and Non-Tax Aspects of Estate Planning, Probate and Trust Law Division, *A Sample Simple Will*, 15 *REAL PROPERTY, PROBATE AND TRUST JOURNAL* 569 (1981) [hereinafter cited as Committee on Estate Planning] (noting difficulty of drafting simple will); Rubenstein, *Attorney Malpractice in California: The Liability of a Lawyer Who Drafts an Imprecise Contract or Will*, 24 *U.C.L.A. L. REV.* 442 (1976) (discussing the extent of imprecise wills).

3. R. DICKERSON, *THE FUNDAMENTALS OF LEGAL DRAFTING* 11–13 (1965).

“Normal usage” refers to the use of words in their normal, general sense whenever possible. When specialized legal terms must be used, these terms are defined in everyday language, to permit a lay reader’s understanding. Customary boilerplate has been eliminated; technical language such as “per stirpes”<sup>4</sup> and difficult concepts such as marital deduction have been avoided.

While observing these three fundamental principles of drafting, the authors have nevertheless held as their first concern the integrity of the substance of the will. No sacrifice of substantive content or of refinement of concept has been made for the sake of readability. Both audiences—the client and the court—are addressed in this form. The rationale for boilerplate provisions and redundant, archaic language was, of course, to ensure the success of the will in court. Neither boilerplate nor redundant language guarantee a successful document, however, and may, in themselves, create problems of interpretation. Drafting for simplicity, consistency, clarity, and good order should always result in improved substance.

The simple will form that follows is intended for a married person with children whose total estate is valued at less than the federal estate tax exemption, which for 1982 is \$225,000.<sup>5</sup> Unless the total value of the estate is more than the equivalent federal estate tax exemption—that is, over \$225,000 in 1982 and up to \$600,000 in 1986<sup>6</sup>—a trust is not necessary for tax-saving purposes. The following form is worded for a married man; the obvious pronoun and noun changes should be made if the will is for a woman. Although this form was drafted primarily for use by Washington residents, no unique provisions regarding community property are included that would limit its use in non-community property jurisdictions.

## II. SUMMARY OF DRAFTING TECHNIQUES USED IN THE SIMPLE WILL FORM

The authors found several techniques useful in drafting the following will form. To organize the will form, they considered what the client or other reader would want to know first and what the reader would look for next. For example, the “players” are identified on the first page so that the reader will not have to hunt through the document to find them. After

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4. Even when “per stirpes” is omitted in favor of the phrase “by right of representation,” the concept, if arcanelly couched, can confuse the lay client, as in the following example: “[I]f any of my children shall predecease me and leave issue me surviving, such issue shall take by right of representation the share herein given to such deceased child of mine.” F. COOPER, *supra* note 1, at 340.

5. See I.R.C. §§ 2001(c), 2010(b) (1981). \$225,000 is the value of an estate that would produce a tax, under § 2001(c), just equal to the maximum credit allowed under § 2010 for the year 1982.

6. See *id.*

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the first article, which specifies the family and guardian, and the second article, which specifies the executor, the disposition of property in Article 3 tells what the "players" will do.

The authors considered ways to make the format practical, for example, by indenting or enumerating in order to clarify complex ideas.<sup>7</sup>

To design individual sentences, the authors considered sentence structures that a client would readily understand. A particularly useful structure proved to be the "If . . . then" sentence consisting of an initial condition or clause (the "if" clause) followed by a consequence or result (the "then" clause). Parallel structure was consistently used. Short sentences were favored over long ones, and sentences that open with the subject were favored over those that open with prepositional phrases or other prefatory structures. Sentences were limited to one idea whenever possible.

To determine degree of detail, two principles were followed. First, the authors avoided over-precision because it often raises unnecessary questions. For example, this excerpt from a standard will form provides detail that is not only unneeded but also puzzling: "I give to my wife, \_\_\_\_\_, if she survives me, any real estate and appurtenances thereto used by me as a winter or summer residence at the time of my death, any interest I may have in a cooperative apartment and all of my tangible personal property . . . ."<sup>8</sup> The inclusion of "winter or summer" unnecessarily raises the question of real estate used in fall and spring. The phrases "any real estate" and "all of my tangible personal property" are all that are needed for accurate and complete coverage. Another phrase commonly found in will forms, "just debts," should be avoided for similar reasons: the inclusion of the word "just" introduces difficulties if the specific debts of the testator were, for example, barred by the statute of limitations or unenforceable under the statute of frauds.<sup>9</sup> The authors attempted to avoid both unneeded precision and vagueness and instead attempted to make statements general whenever possible.

The second principle for determining detail is related to the first. Given that the narrowest term will govern if there are questions of interpretation, the authors have avoided overly narrow modifications or descriptions. For example, one standard will form provides that:

[T]rustees are authorized to pay to or apply for the benefit of my wife during her lifetime, so much, all, or none of the principal of the trust as my trustee (other than my wife), in the exercise of discretion, shall deem necessary or

7. For example, see §§ 2.2 and 3.1 in the will form, part III *infra*.

8. Committee on Estate Planning, *supra* note 2, at 571 n.11.

9. F. COOPER, *supra* note 1, at 339. Debts have been omitted from the will form because these are required by statute to be paid from the estate. WASH. REV. CODE ch. 11.40 (1981).

desirable for the maintenance in health and reasonable comfort of my wife and for her support in her accustomed manner of living. Before any such payments are made *in the discretion of the trustees* the principal of the marital trust shall be exhausted to the extent feasible.<sup>10</sup>

The italicized phrase unnecessarily limits the type of payments that may not be made before the principal of the trust is exhausted. The phrase "any such payments" refers to those payments specified immediately before; the additional modifier "in the discretion of the trustees," by narrowing the range of payments, adds unneeded and possibly confusing language. In the following form customary phrases have been shortened and simplified, and whenever possible modifiers have been avoided entirely.

The following list shows recurring phrases that were consistently shortened or simplified in the will form.

<i>Unrevised Phrases and Words</i>	<i>Revised</i>
in respect to, of	to
any and all	all
all or any part	any
in the event that	if
aforesaid	[omit or specify]
give and place the custody	give custody
respective minorities	minorities
hereunder, therein, herein, hereinabove	[omit or specify]
without limitation	including
at any time and from time to time	[omit]
principal of my estate	principal
provided that	if
to make any such distributions	to distribute
by a period of 30 days	by 30 days
property of every kind and character	any property
said, such, same	[omit]
expiration	end

As indicated in the list above, the authors have avoided the use of vague archaic terms, such as "herein," "hereinafter," "said," "aforesaid," "hereafter," and "hereby." These terms give the appearance of precision without specifying the place or time referred to. The reader is not told where the "here" is in "herein," when the "here" is in "hereafter," what the "here" is in "hereby," or when the "afore" was in "aforesaid." The word "said" does not refer specifically to any antecedent and is thus similarly superfluous.<sup>11</sup>

10. Committee on Estate Planning, *supra* note 2, at 577 (citations omitted & emphasis added).

11. D. MELLINKOFF, *THE LANGUAGE OF THE LAW* 318-19 (1963).

III. THE SIMPLE WILL FORM

The following form reflects the authors' belief that a will can be plainly written so that those who sign it and those who are bound by it may understand it fully.

The drafting decisions reflected by the form are discussed in the numbered paragraphs that follow.

WILL  
OF

\_\_\_\_\_  
I, \_\_\_\_\_, declare this to be my Will and revoke all prior Wills and Codicils.<sup>1</sup>

ARTICLE 1. FAMILY; GUARDIAN<sup>2</sup>

My immediate family<sup>3</sup> now consists of my wife,<sup>4</sup> \_\_\_\_\_ ("my wife"), and our \_\_\_\_\_ children, \_\_\_\_\_

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

all of whom reside with me<sup>5</sup> at \_\_\_\_\_

\_\_\_\_\_  
The provisions of this Will shall apply not only to my \_\_\_\_\_ children named above and their issue,<sup>6</sup> but also to all<sup>7</sup> children who may hereafter be born<sup>8</sup> to or adopted by me and to their issue.<sup>9</sup>

If my wife does not survive me and it becomes necessary to appoint a guardian<sup>10</sup> for any child of mine, I appoint \_\_\_\_\_

\_\_\_\_\_  
Guardian of the person and estate<sup>11</sup> of each such child. If \_\_\_\_\_

\_\_\_\_\_  
at any time declines to act, fails to act, or is unable to act as Guardian, I appoint \_\_\_\_\_

\_\_\_\_\_  
as Guardian of the person and estate.<sup>12</sup>

ARTICLE 2. EXECUTOR<sup>13</sup>

2.1 *Designation.* I appoint my wife, \_\_\_\_\_, as my Executor.

If she at any time declines, fails, or is unable to act as my Executor, I appoint \_\_\_\_\_

\_\_\_\_\_ as my Executor. If both my wife and \_\_\_\_\_ at any time decline, fail or are unable to act as my Executor, I appoint \_\_\_\_\_

Seattle, Washington, and its successors, to act as my Executor.<sup>14</sup>

2.2 *Bond Waiver; Powers.*<sup>15</sup> No bond, surety, or other security shall be required of my Executor in any jurisdiction for any purpose. My Executor shall have unrestricted nonintervention powers<sup>16</sup> to settle my estate in the manner set forth in this Will. Furthermore, my Executor shall have<sup>17</sup> full power,<sup>18</sup> authority, and discretion to do all that my Executor thinks<sup>19</sup> necessary or desirable in administering my estate, including the authority to:

(a) Make interim distributions of principal and income to those who are to receive the principal and the income;<sup>20</sup>

(b) Sell, lease, exchange, mortgage, pledge, or assign all or any part of the property of my estate for any purpose which my Executor thinks is in the best interests of my estate, whether or not it is necessary in order to pay debts, taxes, or expenses of administration;

(c) Invest and reinvest property that is not specifically given,<sup>21</sup> in any form of investment that my Executor thinks advisable; and

(d) Continue<sup>22</sup> to operate any business or business properties in which I have an interest at the time of my death and, in so doing, delegate discretionary as well as administrative powers.

2.3 *Taxes from Residue.*<sup>23</sup> I direct that all estate, inheritance, and other taxes imposed by reason of my death, and interest or penalties on those taxes,<sup>24</sup> shall be paid by my Executor out of the residue of my estate. This direction<sup>25</sup> shall apply to all such taxes attributable to all property of my estate even though some property does not pass under my Will or is not part of the residue of my estate.

### ARTICLE 3. DISPOSITION OF PROPERTY<sup>26</sup>

3.1 *Home; Tangible Personal Property.* If my wife survives me by thirty days, I give<sup>27</sup> her all of my interest in<sup>28</sup>

(a) the residence property which we occupy as a home at the time of my death, together with all rights associated with the property,<sup>29</sup> and

(b) tangible personal property of every kind, for example,<sup>30</sup> motor vehicles, boats, furniture, furnishings, books, objects of art, sporting equipment, jewelry, clothing, and other property of a household or personal kind.

If my wife does not survive me by thirty days,<sup>31</sup> I give to those of my children who survive me by thirty days<sup>32</sup> the tangible personal property described in (b) of the preceding paragraph (except motor vehicles and boats). This property, if two or more of them survive me by thirty days, shall be

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divided among them by my Executor, in as nearly equal shares as may be practicable, having due regard for their personal preferences. My Executor may sell any of such property and distribute the proceeds to equalize the shares. My Executor shall be discharged in distributing tangible personal property so given to any minor child when the child or any adult having custody of the child delivers a written receipt to my Executor.

3.2 *Residue*.<sup>33</sup> If my wife survives me by four months, I give her the residue of my estate. If my wife does not survive me by four months, I give the residue of my estate in equal shares

one to each of my children who survives me by four months and

one by right of representation to surviving issue of each of my children who does not survive me by four months but who leaves issue surviving me by four months.

If neither my wife nor any of my issue survive me by four months, I give the residue of my estate

one-half as if I had died on the last day of the four-month period without a Will and

one-half as if it were my wife's estate and she had died on the last day of the four-month period without a Will,

according to the Washington laws of descent and distribution.

\* \* \*

I have initialed for identification purposes all pages of this my Will and have executed the entire instrument by signing this page on \_\_\_\_\_, at Seattle, Washington.

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### STATEMENT OF WITNESSES<sup>34</sup>

Each of the undersigned declares under penalty of perjury under the laws of the State of Washington, on this \_\_\_\_ day of \_\_\_\_ at Seattle, Washington, that the following is true and correct:

- (1) I am over the age of twenty-one years and competent to be a witness to the Will of \_\_\_\_\_ (the "testator").
- (2) The testator in my presence and in the presence of the other witness whose signature appears below
  - (a) Declared the foregoing instrument to be his Will;
  - (b) Requested me and the other witness to act as witnesses to his Will and to make this statement; and
  - (c) Signed such instrument.
- (3) I believe the testator to be of sound mind, and that in so declaring and signing he was not acting under any duress, menace, fraud, or undue influence.



- (4) The other witness and I in the presence of the testator and of each other now affix our signatures<sup>35</sup> as witnesses to the Will and make this statement.

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[address]

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[address]

#### IV. COMMENTARY ON SIMPLE WILL FORM

1. *Naming of Testator.* Wording that typically appears in the first sentence of a will has been simplified here. The series "make, publish, and declare" has been shortened to "declare" in order to avoid both wordiness and overprecision. "Will and testament" has been reduced to "Will." The customary statement "I hereby expressly revoke and cancel any and all other wills, codicils, and testamentary dispositions heretofore at any time made by me" has been reduced, not merely to the words "hereby revoke," but to the single word "revoke." The phrase "any and all wills previously made by me" has been shortened to "all prior Wills."

The legal effect of the simple and direct fourteen-word sentence beginning this form is equivalent to that of this outdated introductory clause:

In the name of God, Amen: Know all men by these presents: That I, \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, being in good bodily health and of sound and disposing mind and memory and not acting under duress, menace, fraud or undue influence of any person whomsoever, calling to mind the frailty of human life, and being desirous of disposing of my worldly estate with which it has pleased God to bless me, while I have strength and capacity so to do, do make, publish and declare this my Last Will and Testament, hereby revoking all other wills, legacies, bequests, or codicils by me heretofore made, in the manner and form following:<sup>12</sup>

2. *Family; Guardian.* The family and guardian are identified in the first article because the reader needs to know who the "players" are before reading about what they will or will not receive. The immediate family is identified, and provision is made for "after-born" children. If a child is not "named or provided for" (a "pretermitted" child), the testator will be deemed to have died intestate as to that child, and the child will be entitled to that portion of the estate that the child would have received

12. F. COOPER, *supra* note 1, at 338.

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had the testator died without a will.<sup>13</sup> For this reason, it may be important to define children as including after-born and adopted.

3. “*immediate family.*” Since a notice of appointment must be sent to each “heir” (those that would be entitled to a portion of the estate if the testator dies without a will), it is helpful to have names and addresses which were current at least at the time the will was signed.

4. “*wife.*” The authors use the terms “wife” and “husband” rather than “spouse” because clients think of themselves as wives and husbands rather than as spouses and thus identify more immediately and comfortably with the situations described in the will.

5. “*all of whom reside with me.*” The authors prefer the familiar term “reside” rather than the less familiar term “domicile,” which has a more precise legal meaning. An individual’s residence is, in nearly every instance, his or her domicile. For almost every client, the term “domicile” used as a noun or otherwise (“domiciled”) will be unnecessarily perplexing; “domicile” is not as familiar as “residence,” nor does it clearly convey to a lay reader a legal meaning distinct from “residence.” In instances where the residence is not the domicile, an explanatory statement such as the following should be added: “My present domicile is in the State of Washington. Although I presently reside in Washington, D.C., it is my intention that the State of Washington continue as my domicile.”

6. “*issue.*” The term “issue” is used rather than “descendants,” “children,” or “heirs” because “issue” includes all the lawful lineal descendants of the ancestor and all lawfully adopted children.<sup>14</sup> A “lawfully adopted child” is not an “heir” of his or her natural parents.<sup>15</sup>

7. “*all.*” For brevity the authors have consistently chosen to use the term “all” rather than “any and all.”

8. “*hereafter be born.*” This phrase is used to avoid a pretermitted child in the event that any children might be born or adopted after the date of the will.

9. The length of this sentence is offset by the internal parallelism provided by the “not only . . . but also” structure. When sentences are necessarily longer than twenty-five words, the authors have used internal parallel structures to increase readability.

10. *Guardian.* The guardian is then appointed as being next in importance to the testator. Most parents want to exercise their legal right to appoint a guardian for any minor child.<sup>16</sup>

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13. WASH. REV. CODE § 11.12.090 (1981).

14. *Id.* § 11.02.005(4).

15. *Id.* § 11.04.085 (1981); *see also id.* § 26.32.140 (1981) (effect of decree of adoption).

16. *Cf. id.* § 11.88.080 (1981) (authorizing appointment of surviving parent as guardian).

11. “Guardian of the person and estate.” This nomenclature is used rather than “guardian of the person and property.” Statutes<sup>17</sup> provide for the appointment of a guardian of the person and for a guardian of the estate. While an individual may be appointed as guardian of both the person and the estate of a minor or incompetent, a corporate trustee (a bank with trust powers) cannot act as guardian of the person.

12. The last two sentences of Article 1 were simplified for the lay reader by the use of “if . . . then” constructions. The “if” clauses describe a possible event in simple terms; the “then” clauses follow with a simple statement of the consequence or result of that event.

13. Appointment and powers of the Executor appear on the first or second page for easy identification.

14. The sequence of two “if . . . then” sentences serves to simplify and clarify possible outcomes, beginning with the most likely outcome and continuing in logical order: (1) my wife will be Executor; (2) if she is unable, then X will do it; (3) if neither she nor X are able, then Y will do it.

This clear, logical progression is easier for a client to understand than the convoluted explanations often found in a single extra-long sentence, for example, “I appoint \_\_\_\_\_, and \_\_\_\_\_, or the survivor of them, to be the Executors under this my will, and if all of them are not then living or fail to qualify or cease to serve, I appoint \_\_\_\_\_ as successor executor . . . .”<sup>18</sup>

15. The powers of the Executor are separated visually from the designation so that the reader may quickly locate one or the other. The powers of the Executor are also easy to locate by tabulation (“a” through “d”) and by indentation. Each of the four categories begins with a verb so as to clearly link each category with the introductory phrase “including the authority to.” The powers of the Executor are frequently set forth in a single seemingly endless sentence.<sup>19</sup>

17. E.g., WASH. REV. CODE ch. 11.88 (1981).

18. Committee on Estate Planning, *supra* note 2, at 582.

19. For example, one authority states:

In the administration of my estate and of any fund held hereunder my fiduciaries shall have the following powers, exercisable without court approval and in the discretion of my fiduciaries, pursuant to their fiduciary responsibilities, upon such terms and conditions as my fiduciaries shall deem advisable, in addition to, and without limitation upon any other powers granted by this will or by law: to retain any property owned by me or at any time held hereunder, including any business or interest therein; to invest and reinvest in any property whatsoever, without regard to any legal limitations upon investments, and without regard to the principle of diversification; to invest and reinvest in shares of common trust funds, whether or not maintained by any corporate fiduciary serving hereunder; to sell or exchange any property at public or private sale, for cash or credit, with or without security; to mortgage, pledge or lease, or grant options with respect to any property, for any period of time, whether or not extending beyond the administration of my estate or any fund held hereunder; to demolish, abandon, or otherwise dispose of any

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16. “*unrestricted nonintervention powers.*” Because RCW 11.68.050 appears to give the court the authority to “restrict” the powers of the personal representative, the use of the term “unrestricted” is an attempt by the testator to indicate to the court that he or she does not want such a restriction.

17. The second and third sentences in section 2.2 have parallel structures for clarity and ease of reading: “My Executor shall have . . . . Furthermore, my Executor shall have . . . .” Parallelism and balanced structures are also found in subsection (a): “Make interim distribution of principal and income to those who are to receive the principal and the income.” By repeating words and arrangements of words at the beginning of successive sentences, the authors are more often able to limit sentences to a single idea.

18. “*full power.*” The combination of the phrase “full power” and the word “including” provide ample breadth to the Executor’s powers. There is no need for such modifiers as “without limitation” or “in addition to any other powers granted by this will or by law.” The word “including” is the key, indicating, as always, a partial rather than complete list.<sup>20</sup>

19. “*thinks.*” The authors use “thinks” rather than the more common word “deems,” preferring to leave “deeming” to the courts and “thinking” to the testator. Clients are unlikely to describe any action they might take as “deeming.”

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property; to manage, insure, repair, improve, develop, subdivide, partition, and alter any property; to borrow money for any purpose in connection with the administration of my estate; to register and hold securities in the name of a nominee, and to hold securities in bearer form; to incorporate any business or property, and thereafter to hold a majority or minority interest in such corporation; to transfer any business or property to a general or limited partnership, and thereafter to be a general or limited partner in such partnership; to vote stock or securities, in person or by proxy, discretionary or otherwise, or pursuant to a voting trust agreement; to exercise subscription and conversion rights, and to participate or refuse to participate in any type of reorganization, recapitalization, merger, consolidation, liquidation, dissolution or other action with respect to any corporation; to settle, compromise, or refer to arbitration, any claim or obligation in favor of or against my estate or any fund held hereunder; to continue, renew, extend or modify any note, bond, other indebtedness or mortgage, and to enforce payment of such indebtedness or mortgage by foreclosure or otherwise; to employ legal counsel, accountants, brokers, investment advisors, custodians, managers, and other agents and employees, and to pay them reasonable compensation out of my estate, or out of any fund held hereunder to which such compensation is attributable; to allocate receipts and disbursements between income and principal, in such manner as my fiduciaries shall deem equitable; to distribute in kind or partially in kind any property, in such manner as my fiduciaries shall deem equitable; to qualify, or appoint a third party as ancillary administrator if necessary or desirable, and to compensate such ancillary administrator; and in general, subject to their fiduciary duties, to exercise any additional powers which I might exercise if I were living, competent, and the absolute owner of any property at any time held thereunder.

Committee on Estate Planning, *supra* note 2, at 582–83 (footnotes omitted).

20. R. DICKERSON, *supra* note 3, at 106–07.

20. *“those who are to receive the principal and the income.”* This clause illustrates the drafter’s occasional need to lengthen in order to clarify. The term commonly used instead is “remainder beneficiaries,” which may be incomprehensible to a lay reader. Such a reader can, however, easily understand “those who are to receive the principal and the income.”

21. *“specifically given.”* “Specifically given” refers to a specific gift, such as a home, as opposed to a residuary gift. Because it is more common, the word “given” is consistently used rather than the archaic word “bequeathed.”

22. *“Continue.”* “Continue” is the last of four parallel active verbs beginning with “Make,” “Sell,” and “Invest.” Active verbs are easier to understand and more vivid than forms of “to be” or other weak verbs; here they receive emphasis because they are the first words in an indented and tabulated series.

23. *Taxes from Residue.* This section is placed in Article 2 because it directs the Executor and so fits logically after the designation and powers of the Executor. This section could also be placed as a separate article after Article 2.

Debts and administrative expenses have been omitted from this form because these are required by statute to be paid from the estate. If creditors do not file a claim within the statutory period (four months after publication of the notice), then creditors might argue that they should be paid anyway if a direction appears in the will. In any event, the provision is not necessary.

24. *“on those taxes.”* The repetition of “on those taxes” is preferred to the use of the vague word “therein” (“interest or penalties therein”). Repetition of words normally presents no obstacle to the reader; in fact, once the reader has comprehended a word, the second appearance of that word speeds up the reading because it need not be “processed” again. If, however, a word like “therein,” “herein,” or “aforementioned” is used in place of a word or idea, then the reader must either translate “therein” or read back over earlier material to find what the “there” refers to.

25. *“This direction.”* The two sentences in section 2.3 are designed to be comprehended as a conceptual unit: the first describes the Executor’s responsibility; the second modifies the first. Rather than fit both ideas into one long sentence, the authors have constructed two sentences with “matching” subjects: “I direct that” and “This direction shall . . . .”

26. All of the property is disposed of in one article rather than in several separate ones. This extremely important section should be self-contained. That is, the reader should find out in one place how all of the property will be disposed of rather than having to read through the entire

will to perceive a complete picture of the property disposition. The article is divided into two subsections, entitled "Home; Tangible Personal Property" and "Residue." The first part of section 3.1 defines tangible personal property, and the second part explains what is to be done with it if the wife (or husband) does not survive the husband (or wife) by thirty days.

The term "Tangible Personal Property" is used to distinguish between intangible personal property, such as shares of stock or bank accounts, and tangible items, such as those listed in subsection 3.1(b).<sup>21</sup>

27. "*give.*" The archaic words "bequeath" and "devise" are replaced by the more common word "give."

28. Parallel structure, tabulation, and indentation are used to emphasize the items given to the wife (or husband). The parallel nouns "the residence property" and "tangible personal property" both follow logically from the introductory phrase "all of my interest in."

29. "*all rights associated with the property.*" This general and inclusive phrase is preferable to a more detailed statement of such rights, for example, this over-precise description: "appurtenances, including easements, rights of way and other tangible or intangible rights associated with the use of such property."

30. "*for example.*" This phrase is used to indicate that what follows is an illustration only, not a complete list.

31. Section 3.1, beginning with the clause "If my wife survives me by thirty days" is echoed in the clause "If my wife does not survive me by thirty days." The repetition of the earlier structure, that is, the obvious parallelism, draws attention to the conceptual link.

32. "*by thirty days.*" The authors have chosen consistently to repeat words and phrases rather than to refer back to them with pronouns and words like "such" or "said." Thus the phrase "by thirty days" is repeated rather than "by such period." Similarly, the words "this property" are used rather than "such property."

A provision for order of deaths in case of simultaneous death might be necessary if one spouse has substantial separate property. Otherwise such a provision is unnecessary because survivorship periods of thirty days and four months also cover simultaneous death.

33. Section 3.2 is arranged in a pattern of parallel structures to simplify its complex substance. The largest parallel structures occur at the beginning of each of the two paragraphs: "If my wife survives me by four months, I give her . . ." and (paragraph two) "If neither my wife nor any of my issue survive me by four months . . ." Within the first para-

21. See Estate of Dodge, 6 Cal. 3d 311, 318-19, 491 P.2d 385, 390, 98 Cal. Rptr. 801, 806 (1971).

graph, the second sentence is parallel to the first and follows logically from it: "If my wife survives me . . . . If my wife does not survive me . . . ." Within the last sentence, internal parallelism helps to order ideas and increase readability: "one to each . . . and one by right . . . ." For simplicity and clarity, the phrase "by four months" is repeated and such phrases as "prior to the time of the later death" are omitted as being nearly incomprehensible to any reader.

The second paragraph parallels and repeats the beginning of the first: "If neither my wife nor any of my issue survive me by four months . . . ." The division of residue is clarified by indentation and parallelism within that first sentence: "one-half as if I had . . . one-half as if it were . . . ."

This form avoids the redundant wording customary in residuary clauses:

All the rest, residue, and remainder of my estate, real, personal, or mixed, including lapsed legacies hereunder, I give, devise and bequeath to my wife, \_\_\_\_\_, if she survives me. If she predeceases me, then I give, devise and bequeath the said rest, residue and remainder to my \_\_\_\_\_, if \_\_\_\_\_ survives me,. . . .<sup>22</sup>

34. A will must be signed by the testator and "attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator by his direction or request . . . ." <sup>23</sup> The witnesses may, at the request of the testator, make an affidavit on the will "stating such facts as they would be required to testify in court" <sup>24</sup> to prove the will. In 1981, a new section was added<sup>25</sup> to RCW Chapter 9A.72 providing that whenever, under any law of this state, any matter in an official proceeding is required to be established or proved by a person's affidavit, the matter may be proved by an unsworn statement which:

- (1) Recites that it is certified or declared by the person to be true under penalty of perjury;
- (2) Is subscribed by the person;
- (3) States the date and place of its execution; and
- (4) States that it is so certified or declared under the laws of the State of Washington.

35. "*signatures.*" No states now require that witnesses set their seals upon a will. Thus the customary wording "In witness whereof I have

22. F. COOPER, *supra* note 1, at 344.

23. WASH. REV. CODE § 11.12.020 (1981).

24. *Id.*

25. Act of May 14, 1981, ch. 187, 1981 Wash. Laws 854 (codified at WASH. REV. CODE § 9A.72.085 (1981)).

## A Simple "Simple" Will

hereunder set my hand and seal" may be eschewed both in form and in substance.

### V. CONCLUSION

A will should clearly communicate a testator's wishes, both to the court and to the testator when the testator reads it outside the lawyer's office. This clear communication requires care and time on the part of the draftsman. The substance of a will is ordinarily easier to draft than, for example, the substance of a contract where compromises between opposing parties usually control both substance and form. As a personal document, however, a will presents a different kind of challenge: lawyers must bridge the distance between their specialized knowledge and a client's general knowledge.

This challenge can be met by following the principles of drafting described in this Comment: consistency, clear organization, and normal usage. As a final step in preparing a will, the draftsman should check consistency of word use by reviewing the will as a whole to check each use of key words and to eliminate synonyms or other inconsistencies. The will should be reviewed as a whole for impractical organization and for terms that may be unfamiliar to a lay reader. When lawyers use forms provided by their law offices or by banks, they should plan to spend time tailoring the forms to suit their clients' needs, especially their need to understand completely their own will. Client appreciation for the lawyer's effort to simplify should make that effort well worth the time.