**Template:**Will for Individual with Spouse or Partner (Optional Trust(s) for Spouse and/or Children) (NJ)

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| **Form Summary** |
| *This form is a complete will for use by a testator in New Jersey who wishes to provide an outright distribution for his or her spouse, registered domestic partner, or civil union partner (hereinafter "partner"). It also includes optional trust distribution provisions for the testator's spouse and children. This form contains practical guidance, drafting notes, and alternate and optional clauses.  This will is designed for a married testator, a testator in a registered domestic partnership, or a testator in a civil union, who wishes to leave his or her entire probate estate outright to the surviving spouse or partner, with an optional provision enabling the surviving spouse to disclaim assets to fund one or more trusts. Although inclusion of the disclaimer trust provisions makes the disposition plan significantly more complicated than would otherwise be the case, it may be very useful from an estate tax-savings perspective. The disclaimer trust in this form directs the distribution of all income to the surviving spouse for life, with discretion to sprinkle principal among the surviving spouse and the testator's issue for their health, education, maintenance, and support. You can modify these distributive terms to meet the client's specifications. On the death of the surviving spouse, the trust directs the distribution of the assets to the testator's issue.  If the testator's spouse or partner does not survive the testator, the residuary estate passes to the testator's children, either outright or in trust. If the testator chooses to distribute the estate outright to beneficiaries, any share for a minor child will be distributed to an individual having the care or custody of a minor child at the discretion of the executor (also referred to as the personal representative). Generally, this would be a guardian of the minor or a custodian of a custodial account under the Uniform Transfers to Minors Act (UTMA) or Uniform Gifts to Minors Act (UGMA). However, an individual with minor children may choose to forgo the simpler UGMA/UTMA option, and instead opt for a testamentary trust (sometimes referred to as an express trust), which can be structured as either (1) a shared "pot" trust for the benefit of the testator's children collectively, or (2) separate share trusts for each of the testator's children. Although inclusion of testamentary trusts (e.g., express trusts) makes the disposition plan significantly more complicated and costly than would otherwise be the case, the testator may be desirous of creating a long-term distribution plan or providing creditor and spendthrift protections. A testator could also use one or more testamentary trusts for adult children in lieu of an outright distribution.  Establishing a pot trust may be desirable if the testator wants to provide for his or her children in a way that addresses each child's particular needs, as opposed to giving fixed fractions to each child outright or in separate trusts. A pot trust allows the trustee to treat younger surviving children much as the parents would have if providing for those children during the parents' lifetime, since parents often provide for their children in ways that may not be entirely equal. For example, one child might attend an expensive private college and another child might opt to attend a less expensive public college. Or one child may have been born many years after another child and may not have the same financial needs as the older child.  Alternatively, separate share trusts may be desirable when the testator wants each of his or her children (or issue of a predeceased child) to share equally in the testator's estate, and when the testator wants to provide for management of estate assets until his or her children reach a certain age. Establishing individual separate share trusts, as opposed to a single pot trust, is appropriate when all of the beneficiaries have reached the age of majority. The individual trusts usually provide an equal share of principal for each child but can be modified to provide unequal shares. The trustee has discretion in providing for each beneficiary from his or her own trust until the child attains the specified age.  The circumstances of the testator and beneficiaries, as well as the specific intentions of the testator, may require modifications to this form. For a will for a single individual, see*[*Will for Single Individual (Optional Trust(s) for Children) (NJ)*](https://advance.lexis.com/api/document?idtype=PID&context=1000522&id=urn:contentItem:627C-WRT1-JNY7-X2MW-00000-00)*. For an in-depth discussion of wills, see*[*Purposes and Uses of a Will (NJ)*](https://advance.lexis.com/api/document?idtype=PID&context=1000522&id=urn:contentItem:5XH6-FB21-JC0G-62YV-00000-00)*and*[*Revocation, Revival, Amendments, and Will Contests (NJ)*](https://advance.lexis.com/api/document?idtype=PID&context=1000522&id=urn:contentItem:5Y87-D8X1-DXWW-23B6-00000-00)*.* |

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| **Military Service:** Testator is: | |
| In the United States Armed Forces  Retired from the United States Armed Forces  A Dependent of someone IN the US Armed Forces  A Dependent of someone RETIRED from the US Armed Forces  None of the above (Testator’s status will not be cited) | |
| **Testator** | |
| Full Legal Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| Testator is:  Married  In a Registered Domestic Partnership  In a Civil Union | |
| Is the testator a United States citizen?  Yes  No  Does Testator wish to include his or her city, county, and state of residence?  Yes  No | |
| State of Residence: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **Spouse or Partner** | |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| Does the spouse/partner want to create a will at this time using the same answers provided for the client in this interview?  Yes  No | |
| Sections the spouse/partner wishes to provide different answers (select all that apply): | |
| List of Child/Children  Disinheritance  Specific Gifts  Residuary Estate (everything else after specific gifts)  Contingent Distribution (*only relevant if you seek a trust whereby a trustee could manage requests such as beneficiary must reach age, fees to be used to fees or house deposit. Please note these have to be concrete and clear to avoid being declared void*)  Executors/Trustees | |
| **Declaration on Children** (*Preamble will acknowledges you have children or stepchildren so reader knows provisions relating to children are included within the will)*  Does Testator wish to make a declaration regarding children?  Yes  No  Does Testator wish to make a declaration regarding his or her stepchildren?  Yes  No  Does Testator wish to make a declaration which states that any reference to his or her children shall be to his or her named children (and stepchildren, if applicable) and to any children after born or adopted by Testator?  Yes  No | |
| **Family Members** | |
| |  | | --- | | **Children:** | | Child 1 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |   Child 2 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Child 3 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| *Add any additional:*  **Disinherited Heirs at Law** | |
| Does Testator wish to make a declaration in the Preamble which intentionally disinherits one or more living heirs at law?  Yes  No | |
| Reason for Disinheritance: | |
| For reasons deemed good and sufficient  Not for lack of love or affection  Testator has provided significantly for him/her during lifetime  No further information provided  Other \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   |  | | --- | | **Disinherited Heirs** | | Name of Disinherited Person(s): | | |
| Does Testator wish to make a declaration in the Preamble which states that this decision is intentional and not made by inadvertence or mistake?  Yes  No  Does Testator wish to include the issues of the heir(s) in the disinheritance clause?  Yes  No | |

Drafting Note: If assets that are part of the testator's taxable estate pass other than by the testator's will, consider whether the federal estate tax or New Jersey Inheritance tax attributable to those assets should be paid from the residue of the estate or from some other source. This clause directs the payment of estate and other death taxes attributable to property passing outside the will by the persons who receive such property, in proportion to the value of such property compared to the total value of the estate. The purpose of this provision is to ensure that the tax burden is fairly distributed and that the probate estate is not entirely consumed by death taxes in situations where a substantial proportion of the testator's estate will pass outside of the will. Include the optional provision if Alternate Section 3.1. (directing the creation of marital and family trusts) is used.

In the absence of a tax apportionment provision in the will providing otherwise, the statutory rules for apportionment of estate and other death taxes will apply. See N.J. Stat. Ann. § 3B:24-2–3B:24-4. See also Modern Estate Planning § 61.03.

The estate tax is a tax on the value of the decedent's estate before distribution to any beneficiary. For estates of decedents dying in 2021, the federal exclusion amount is $11.7 million. New Jersey eliminated its estate tax for estates of decedents dying after January 1, 2018, but maintained the inheritance tax on transfers to certain beneficiaries (i.e., beneficiaries other than immediate family members). See N.J. Stat. Ann. §§ 54:34-1 and 54:38-1(a)(4). See also N.J. Admin. Code § 18:26-2.1.

Estate tax planning is particularly relevant for couples, given that basic estate tax planning seeks to leverage each individual's estate tax exclusion to effectively "double" the federal estate tax exclusion ($23,400,000 per couple in 2021). However, disclaimer trusts, marital deduction trusts, and portability are only available to spouses. Portability of the deceased spousal unused exclusion ("DSUE") allows a surviving spouse to use any unused portion of his or her deceased spouse's estate tax exemption. The election must be made by the fiduciary of the deceased spouse's estate on a Form 706 filed within nine months of death. See I.R.C. § 2010(c)(5)(A). See [Portability Election and the Deceased Spousal Unused Exclusion](https://advance.lexis.com/api/document?idtype=PID&context=1000522&id=urn:contentItem:5T94-2X11-F30T-B3BR-00000-00) for additional information. For each estate that exceeds exclusion thresholds, there is a highly case specific analysis that should involve competent legal counsel and a certified public accountant. Estate tax returns are unique, and there are discretionary tax elections that must be made within important deadlines shortly after a death.

The executor or administrator of the estate of a decedent is required to file the decedent's estate tax return. See I.R.C. §§  2203 and 6018(a). If there is more than one executor, then the return must be made jointly by all executors or administrators. Treas. Reg. § 20.6018-2. If there is no executor or administrator, each individual in actual or constructive possession of the decedent's property is deemed to be an executor for purposes of the estate tax and is required to file a return. Treas. Reg. § 20.6018-2.

For additional information on the federal estate tax, see [Apportionment of Estate Tax](https://advance.lexis.com/api/document?idtype=PID&context=1000522&id=urn:contentItem:5TBR-6PP1-JBM1-M33F-00000-00), [Payment of Estate Taxes](https://advance.lexis.com/api/document?idtype=PID&context=1000522&id=urn:contentItem:5TBR-6PP1-JBM1-M33B-00000-00), and [Estate and Trust Taxation (NJ)](https://advance.lexis.com/api/document?idtype=PID&context=1000522&id=urn:contentItem:5SFS-3FY1-JS0R-23V9-00000-00)

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| **Generation-Skipping Transfer Tax**  Does Testator wish to include an optional provision directing the payment of any generation-skipping transfer tax from the property generating the tax?  Yes  No |
| **Pre-residuary Gifts and Devises:** (You can make specific gifts or in NJ refer to a Note or Memo which lists those gifts (see below section)) | |
| Testator wishes to make a: | |

Specific gift of personal property: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Devise of real property: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cash gift: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

None of the Above

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| **Tangible Personal Property**  Does Testator wish to make a declaration that if no tangible personal property note or memorandum is found within a certain number of days, it shall be presumed that no such note or memorandum exists?  Yes  No |
| Number of Days: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Person(s) paying packing, shipping, insuring, and delivery of tangible personal property to beneficiaries:  Executor  Recipient of Tangible Personal Property |
| If Spouse/Partner does not survive, Testator gives all tangible personal property not otherwise disposed of to:  Class of Beneficiaries (e.g., my children, grandchildren, etc.)  Name Beneficiary Class (e.g., my children):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Multiple Beneficiaries  A Single Beneficiary |

The testator must select the distribution method for which a predeceased child's descendants will inherit the property. Note that while both "per stirpes" and "per capita at each generation" are commonly used, the resulting distributions to beneficiaries might vary significantly depending on the method used. To distinguish between the two rules, consider the following example: The testator had three children: A, B, and C, but B and C passed away before the testator. B had two children: B1 and B2. C had three children: C1, C2, and C3. Under the "per stirpes" rule, the estate would be divided into three equal parts for the children, with the deceased child's issue taking the deceased child's share. Thus: 1/3 to A, 1/6 each to B1 and B2, and 1/9 each to C1, C2, and C3. Under the "per capita at each generation" rule, A would still get 1/3, but B1, B2, C1, C2, and C3 would all equally share the remaining 2/3. Explain these dispositive schemes to your clients, determine their wishes, and select a distribution method accordingly.

Timeline

Description automatically generated

Visualization of Example of Per Stirpes vs. Per Capita at Each Generation

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| **Residuary Estate** |
| Does Testator's residual estate include property of any nature over which he or she may have any power of appointment or testamentary disposition, including any lapsed dispositions?  Yes  No |
| Disposition if Testator’s Spouse/Partner predeceases Testator:  Testator wishes to distribute the residuary estate outright to Testator’s living children and to the descendants of a deceased child;  PER CAPITA EACH GENERATION  PER STIRPES  Testator wishes to direct the residuary estate to a pot trust when one or more of the beneficiaries are under the stated age; \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Testator wishes to direct the assets into equal separate share trusts for children.  Testator wishes to dispose of residuary estate to one beneficiary, or to two or more beneficiaries in equal shares;   1. Beneficiary Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,   Relationship to Testator: \_\_\_\_\_\_\_\_\_\_\_\_   1. Beneficiary Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,   Relationship to Testator: \_\_\_\_\_\_\_\_\_\_\_\_   1. Beneficiary Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,   Relationship to Testator: \_\_\_\_\_\_\_\_\_\_\_\_  Testator wishes to dispose of residuary estate to two or more beneficiaries in unequal shares.  Outright  In Trust   1. Beneficiary Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,   Relationship to Testator: \_\_\_\_\_\_\_\_\_\_\_\_  Percentage: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   1. Beneficiary Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,   Relationship to Testator: \_\_\_\_\_\_\_\_\_\_\_\_  Percentage: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   1. Beneficiary Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,   Relationship to Testator: \_\_\_\_\_\_\_\_\_\_\_\_  Percentage: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **\*\*\*If any of the beneficiaries does not survive the Testator by \_\_\_\_ days, the share of such beneficiary shall be divided among the surviving beneficiaries.**  Equally  In proportion to their respective shares in my Residuary Estate. |

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| **Common Disaster**  If Testator and Testator’s spouse/partner die in a common disaster, shall it be presumed that Testator survived the spouse/partner?  Yes  No |
| **Residuary Estate: Intestate Heirs**  In the event no person designated in this Will is living, so that the disposition of any portion of Testator's estate is not provided for in this Will, such property shall be distributed:  To the persons to whom and in the shares and proportions in which Testator’s estate would have been distributed under the State of New Jersey’s intestacy law.  To the designated individuals and/or charities  Individual or Charity Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Supplemental Benefits Trust** (allows for supplemental and emergency funds to supplement any public benefits available to beneficiary during lifetime) |
| Does Testator wish to enable Trustee to direct a disabled beneficiary's inheritance to a supplemental benefits trust?  Yes  No |

Does Testator with to authorize Trustee to make distributions from trust income and principal for food and shelter?  Yes  No

Remainder Beneficiary Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Designation of Executors**

Testator wishes to nominate and appoint:

Primary Executor and several alternate persons to serve as substitute or successor executors;

1. Primary Executor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

Relationship to Testator: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. First Successor Executor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

Relationship to Testator: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Second Successor Executor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

Relationship to Testator: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Co-executors who may or may not be required to act together; (do not recommend unless co-located)

1. First Co-Executor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

Relationship to Testator: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Secondary Co-Executor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,
2. Relationship to Testator: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**\*\*\*If either of the first and second co-executors shall be unable or unwilling to serve:**

Remaining Co-executor may act alone

Testator will nominate and appoint a successor co-executor;

First Successor Co-Executor Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Compensation and Bond**

Are Executor and Trustee allowed to receive a compensation upon the testator's death?

Yes  No

The Testator directs that

No Executors or Trustees shall be required to give any bond or other security for the faithful performance of duties as Executor or Trustee, unless required by court.

No bond or other security be required of the specified person for the faithful performance of duties as Executor or Trustee.

Do not include

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| **Guardianship** |
| Testator wishes to appoint: |

A Guardian; *(A guardian acts in the place of the parents if the parents die. Guardians raise the children and make all parenting type decisions)*

Will the same individual be appointed as the guardian of the person and estate/property of Testator’s minor children?  Yes  No

*If different individuals, please provide both below:*

Guardian of Person Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

First Alternate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Guardian of Estate Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

First Alternate:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

A Custodian; *(The custodian, sometimes called a property guardian, is in charge of a minor child's inheritance until they reach a certain age. This would likely be the individual to control a UTMA/UGMA. This is usually the same as the “Guardian of Estate” noted above)*

Custodian Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

First Alternate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Both a guardian and custodian

Guardian of Person Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

First Alternate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Custodian or Guardian of Estate Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

First Alternate:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Neither a guardian nor a custodian

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| **Digital Assets** *(emails accounts, social media accounts, digital photos in a “cloud”, etc. This is important if testator conducts a lot of online banking, bill pay, etc. This can be passwords or as expansive as access to content of messages)* |
| Does Testator wish to include all digital assets and devices encompassed by his or her Apple ID?  Yes  No  Does Testator wish to allow the Executor to access the content (i.e., the substance of the communication) of any electronic communication in addition to the catalogue (i.e., identifying information) of the communication?  Yes  No | |

**Trust Administration**

Does the Testator wish to give the trustee the right to refrain from making an otherwise required distribution when it would not be in the beneficiary’s best interests to make such distribution?

Yes  No

Is there a potential substance abuse issue of a beneficiary?  Yes  No

*(There are Spendthrift clauses that withhold distribution where beneficiary has substance abuse, gambling, other debt including bankruptcy)*

**Trustee Powers**

The Trustee shall have the power, in the Trustee’s discretion, to terminate any trust created under this Will whenever the fair market value of the trust falls below $\_\_\_\_\_\_\_\_\_.

Does Testator wish to include a declaration stating that continuing administration shall be uneconomical if the trustee determines that, with reference to the trust fee schedules then in effect for corporate fiduciaries in the area in which the trust is being administered, the trust would be subject to the minimum trust administration fees of those fiduciaries, regardless of the value of the trust?  Yes  No

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| **No Contest** |
| Does the testator wish to include a clause discouraging beneficiaries from contesting the probate and validity of the will or associated trusts?  Yes  No  Should this clause include the contesting beneficiaries’ issue *(children or inheritees*) as well?  Yes  No |

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| **Spouse/Partner: Funeral Representative** |
| Does Testator wish to appoint a funeral designee?  Yes  No |

Representative Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Alternate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_