

ANATOMY OF A WILL (Complex)

The Last Will and Testament is a highly formalized legal document which can be very difficult to understand. This difficulty in comprehension is greatly increased with the length and complexity of the will. This article is designed to assist those not familiar with estate planning to understand the will.

Provided below is the text of a sample will that might be prepared for a military service member with an estate, including life insurance proceeds, large enough for the service member to be concerned about Federal estate tax. (In 2008, the Federal government will tax estates that exceed two million dollars. The threshold increases to 3.5 million in 2009. There is no Federal estate tax at all in 2010. In 2011, unless the current law is changed, the threshold will go back down to one million dollars.) Additionally, this sample will contemplates that the testator has named his two minor children as either the principal or contingent beneficiaries of all or a portion of his life insurance proceeds.

The text of the sample will is in black typeface; summary explanations of the various paragraphs –and in some cases additional explanatory material- are in red.

Sample wills and explanations may be very useful to service members and their families; however, you should discuss your estate needs with an attorney to ensure that your estate planning documents are tailored to meet your individual needs.

MILITARY TESTAMENTARY PREAMBLE: This is a MILITARY TESTAMENTARY INSTRUMENT prepared pursuant to Title 10 United States Code, Section 1044d, and executed by a person authorized to receive legal assistance from the military services. Federal law exempts this document from any requirement of form, formality, or recording that is prescribed for testamentary instruments under the laws of a state, the District of Columbia, or a territory, commonwealth or possession of the United States. Federal law specifies that this document shall be given the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the jurisdiction in which it is presented for probate. It shall remain valid unless and until the Testator revokes it.

Comment: You will find this preamble on wills prepared by military legal assistance offices for persons eligible to receive military legal assistance services. Federal law provides a special protection for such wills, exempting them from any special form or format requirements of each jurisdiction.

LAST WILL AND TESTAMENT

OF

GEORGE WASHINGTON

I, GEORGE WASHINGTON, a resident of the State of North Carolina, make, publish and declare this to be my Last Will and Testament, revoking all wills and codicils at any time heretofore made by me. I am in the military service of the United States, currently stationed at CAMP LEJEUNE, NORTH CAROLINA.

FIRST: I direct that the expenses of my last illness and funeral, the expenses of the administration of my estate, and all estate, inheritance and similar taxes payable with respect to property included in my estate, whether or not passing under this will, and any interest or penalties thereon, shall be paid out of my residuary estate, without apportionment and with no right of reimbursement from any recipient of any such property (including reimbursement under Section 2207B of the Internal Revenue Code). Notwithstanding the foregoing, all estate, inheritance or similar taxes and other charges to principal not deducted in computing the federal estate tax shall be paid first out of the Credit Shelter Trust hereinafter provided for, and, to the extent the Credit Shelter Trust is insufficient to pay such taxes and charges, the balance shall be paid out of my residuary estate, without apportionment. Any state estate, inheritance or other death taxes payable by reason of my death shall be paid out of the residuary bequest to my wife if such taxes may be deducted under Section 2058 of the Internal Revenue Code and if my estate owes no federal estate tax. Any generation-skipping transfer tax under Chapter 13 of the Internal Revenue Code shall be charged to the property constituting the generation-skipping transfer on which such tax is imposed, as provided in Section 2603(b) of the Code. I authorize my personal representative to elect to defer the payment of taxes under Section 6166 of the Internal Revenue Code or applicable state law and, if such election is made, to charge interest on the deferred tax to income or principal and to create a lien on property belonging to my estate for the deferred tax under Section 6324A of the Code or applicable state law.

Summary: Pay the bills of my estate and do it in such a way as to minimize estate taxes, including the normal Federal estate taxes and the generation skipping tax on gifts to grandchildren and more distant relations.

Comment: Note that the executor is responsible for paying the debts of the estate out of the estate assets of the deceased. If the estate assets are insufficient to pay these debts, they simply don't get paid. If the creditor fails to comply with state procedural rules and time limits concerning the making of a claim against the estate, then those creditors don't get paid either. Unfortunately, estate creditors sometimes attempt to mislead executors and family members of the deceased into paying estate debts from their personal funds. Contact your military legal assistance officer or civilian attorney if you think that an estate creditor is trying to mislead you into paying estate bills with your personal funds.

SECOND: It is my desire that, upon my death, I be buried with full military honors at Arlington National Veteran's Cemetery, Arlington, Virginia.

Comment: You may, but are not required to, provide instructions as to how you wish to be buried. In this example, the testator identifies a desire to be buried with military honors at Arlington National Cemetery. In order for such burial to occur, the testator would also have to qualify under Arlington's regulations.

THIRD: I give all real estate owned by me at the time of my death, and all rights that I have under any related insurance policies, to my wife MARTHA WASHINGTON, if she survives me.

Summary:

-I give my real estate to my wife, if she survives me.

Comment:

(1) If the spouse does not survive the testator, the real estate will be distributed in accordance with the residuary estate. See paragraph seventh.

(2) Usually, if a husband and wife own real estate, they will own it as tenants by the entireties with right of survivorship. The surviving spouse will take the real estate outside of the will, by operation of law. Nonetheless, a specific real estate clause may be useful to facilitate the disposition of any interest in real estate owned solely by one spouse.

FOURTH: I give my United States Marine Corps officer sword to my son JOHN WASHINGTON.

All other tangible personal property is given as hereafter provided with respect to my residuary estate.

Comment: This is a simple example of a specific bequest of a tangible object. If John Washington does not survive, the item is distributed as per the residuary clause.

FIFTH: I give the sum of Five Thousand Dollars (\$5,000.00) to BENJAMIN FRANKLIN, if he survives me.

Comment: This is a simple example of a specific cash bequest. Note that the specific bequest will generally take precedence over the residuary. Thus, in this example, Benjamin Franklin will be paid \$5,000 from the estate before the residuary beneficiaries are paid.

SIXTH: (Life Insurance Trust) If upon my death there are any life insurance policies on my life which name the trust under this Article SIXTH as the beneficiary, I give the proceeds of such insurance to be held and disposed of for the benefit of my son JOHN WASHINGTON and my daughter SALLY WASHINGTON (hereinafter referred to as the "Beneficiaries") in accordance with the following provisions:

If all of the Beneficiaries are the age of twenty-one (21) years or older at the time of my death the insurance proceeds shall be paid and distributed to the then living Beneficiaries in equal shares free of trust.

If any Beneficiary is under the age of twenty-one (21) years at the time of my death the insurance proceeds shall not vest in any of said Beneficiaries but instead shall be given to my trustees, **IN TRUST**, as a single trust for the benefit of said Beneficiaries. My trustees shall hold, manage, invest and reinvest the trust assets, shall collect the income therefrom and, after deducting all charges and expenses properly attributable thereto, may pay to, or for the benefit of, any one or more of the Beneficiaries, at any time and from time to time, all or any part of the net income and/or principal of this trust as my trustees shall deem advisable, in the absolute discretion of my trustees, without requirement of equality. Any income not so paid or applied shall be accumulated and added to the principal of this trust at least annually.

When all of the Beneficiaries are the age of twenty-one (21) years or older the trust assets then remaining, if any, shall be paid and distributed to the Beneficiaries in equal shares free of trust and without adjustment for amounts previous distributed to each Beneficiary.

Summary: If I have any life insurance policies that name this trust as the beneficiary, my trustee will manage the funds for the benefit of my two children, spending as trustee sees fit for the health, education and welfare of such children. When the youngest child reaches 21, give the remainder of the trust assets to them equally, free of trust.

Comment:

(1) This provision creates a trust to receive insurance proceeds. The trustee manages these funds, spending on behalf of the minor beneficiaries. However, the trust remains unfunded unless the testator goes to his insurance agent (or in the case of an SGLI policy, his unit administration officer) and makes the trust –not the children- the beneficiary of the life insurance policy. See your military legal assistance attorney for the precise language to be used in filling out the SGLI beneficiary election form to name the trust as the beneficiary. If you have a commercial life insurance policy, contact you insurance agent. Make sure that the will is created and signed before the insurance beneficiary election document.

(2) The life insurance trust provision is typically used to address one of the following situations in which the testator wants life insurance proceeds to be used on behalf of minors: (a) The testator wants the minor children to have the use of the insurance proceeds in the event that the primary beneficiary, usually a spouse, predeceases the testator or dies in a the same disaster as the testator; (b) the testator is pending divorce and wants to ensure that the insurance proceeds will be used for the children without any interference from the estranged spouse; or (c) the testator is a single parent who wants to ensure that the children to have the benefit of the insurance proceeds.

(3) No insurance company is going to provide that big life insurance check to a minor. If a minor is named as beneficiary, the insurer will not pay out any proceeds until a court order is produced, identifying a guardian or trustee to receive the funds. Simply naming a guardian in the will is insufficient for this purpose. Thus, naming a minor as beneficiary of life insurance may, at best, result in needless court proceedings. At worst, those court proceedings can be lengthy and

expensive and may result in the court giving control of the insurance proceeds to someone you would not have wanted to have that authority, your ex-spouse for example. Creating a testamentary trust (a trust created by language in a will) for the benefit of the children, and then naming that trust as the life insurance beneficiary, allows the insurer to pay directly to your named trustee without the necessity of a court ordered guardian. The life insurance trust device also removes the probability that the court will identify a person to handle the children's funds that you would rather not give that power to.

(4) This sample testamentary trust creates a single trust for the benefit of both children instead of separate trusts for each of the children. The single, pooled trust allows then trustee to spend unequally on the children in order to meet their differing needs. For example, if one child is a television actor and the other child is struck by a car and sustains serious, lifelong injury, the financial needs of the two children are vastly different. Or, as a more likely example, suppose one child is accepted to school at West Point or the U.S. Naval Academy and the other child is accepted at a very expensive private college. Once again, their necessary expenses are vastly different.

SEVENTH: I give all the rest, residue and remainder of my property and estate, both real and personal, of whatever kind and wherever located, that I own or to which I shall be in any manner entitled at the time of my death (collectively referred to as my "residuary estate"), as follows:

- (a) If my wife MARTHA WASHINGTON survives me, to my wife outright.
- (b) If my wife does not survive me, then to those of my children (JOHN WASHINGTON and SALLY WASHINGTON and any other children which I hereafter may have) who survive me and to the issue who survive me of those of my children who shall not survive me, per stirpes.
- (c) If my wife does not survive me and there shall be no issue of mine then living, my residuary estate shall be paid and distributed to those of JOHN HANCOCK and PATRICK HENRY who survive me, in equal shares.
- (d) If none of the beneficiaries described above shall survive me, then I give my residuary estate to those who would take from me as if I were then to die without a will, unmarried and the absolute owner of my residuary estate, and a resident of the State of North Carolina.

Summary:

-Everything that I haven't previously identified in this will (life insurance trust, debts of the estate, specific bequests of tangible property and cash) go to my wife if she survives me. If she does not survive me, then I give this property in equal shares to any of my living children.

-If my wife dies before I do and so does one of my children, then that deceased child's share shall be distributed amongst that child's living children (my grandchildren). [This is the meaning of the term "per stirpes"]

-If my wife dies before I do and I don't have any children or grandchildren, then my residuary estate goes in equal shares to John Hancock and Patrick Henry if they survive me. If only one survives me, then to that one surviving beneficiary. If John Hancock and Patrick Henry also don't survive me, then look to the law of North Carolina to see who is next in the statutory pecking that would be used if I died intestate, that is, without a will.

EIGHTH: I authorize my personal representative, in addition to any rights conferred by law and in the absolute discretion of my personal representative, and without the consent of any court having jurisdiction over my estate, to disclaim or renounce, in whole or in part or with respect to specific amounts, parts, fractional shares or assets, any legacy, devise, or interest in or privilege or power over any trust or other disposition provided for my benefit under the will or other instrument of any person at any time within nine months after the date of the transfer (whether by reason of such person's death or otherwise) which created an interest in me.

Summary: My personal representative (gender neutral term for executor/executrix) can disclaim, or reject, any gift that my estate may be getting from someone else.

Comment: Ordinarily, personal representatives should not disclaim gifts to the estate, but there may be occasions where it is beneficial to do so. For example, let's assume that the testator herein, George Washington, died in a vehicle accident due to his negligent driving. That same auto accident resulted in death or serious injury to passengers as well as occupants of the other vehicle involved. Next, let us assume that George Washington's rich old uncle dies, with a will that gives George two million dollars. If George's estate accepts that gift, it probably going to go to pay the testator's creditors, all those people that are suing the estate for injuries resulting from the motor vehicle collision. Depending on all the facts and circumstances, the effect of George's estate disclaiming the gift may be that it goes to George's children, free from any claim of George's estate creditors.

I authorize any person, in addition to any rights conferred by law, at any time within nine months after my death, to disclaim or renounce, in whole or in part or with respect to specific amounts, parts, fractional shares or assets, any devise, legacy, interest, right, privilege, or power granted to that person by this will. Any such disclaimer or renunciation shall be made by a duly acknowledged, irrevocable, written instrument executed by that person or by his or her conservator, guardian, committee, attorney-in-fact, personal representative, executor, or administrator, delivered to my personal representative and filed in accordance with any requirements of applicable law.

Summary: Any person that I give a testamentary gift to is authorized to disclaim that gift. I'm not forcing anyone to receive property from me that they don't want.

If my wife shall disclaim or renounce all or any part of any bequest to her under this will, or of any property passing to her outside this will, by operation of law, beneficiary designation, or otherwise, I direct that such property shall be disposed of in accordance with the provisions of Article NINTH hereof, recognizing that my wife, as an income beneficiary of the trust created pursuant thereto, may be entitled to income therefrom.

Summary: My wife can disclaim all, none, or any part of the gift I give to her. Any part that she disclaims goes into a trust described in paragraph six.

Comment: When the testator meets his Maker, the testator's wife should go meet her accountant to decide how much, if any, of the gift should be disclaimed in order to avoid estate tax.

NINTH: (Credit Shelter Trust) If my wife MARTHA WASHINGTON shall disclaim or renounce any property, as provided for in Article EIGHTH above, or if any property is directed to the following Credit Shelter Trust by operation of law, beneficiary designation, conveyance or otherwise, I give such property to my trustees, **IN TRUST**, to hold the same in accordance with the following provisions (the "Credit Shelter Trust"):

(a) My trustees shall manage, invest and reinvest said sum and shall pay the entire net income therefrom to or for the benefit of my wife or my children, in such proportions as my trustees may determine, from and after my death and for so long as my wife lives, in quarter-annual or more frequent intervals as determined by my trustees in their absolute discretion.

(b) My wife shall have the right to withdraw from the principal of this trust, in each calendar year, an amount not exceeding the greater of \$5,000 or five percent of the principal of the trust valued as of the date the request to withdraw is made by written notice to my trustees. Such right to withdraw shall not be cumulative from year to year. In addition, my trustees may pay to or for the benefit of my wife or my children, for their health, education, maintenance and support, from the principal of this trust, such amounts, including the whole thereof, and in such proportions, as determined by my trustees in their absolute discretion. In exercising the discretionary power to pay income or principal, my trustees may but need not consider any other resources of my wife and shall give primary consideration to my wife's needs and desires.

(c) Upon the death of my wife, I direct that the principal of this trust then remaining shall be paid and distributed to my then living issue, per stirpes.

If none of my issue shall survive my wife, the principal of this trust then remaining shall be paid and distributed to the alternate beneficiaries provided for with respect to my residuary estate.

Summary:

-As to any property in the credit shelter trust, I am giving my trustee the greatest access and control the IRS will let me and still retain the trust's estate tax avoidance ability. My trustees must pay to my wife and children any trust income, in proportions the trustees think best. In addition, my wife has the right to take \$5,000 or 5% of the trust principal annually. Furthermore, the trustees may spend trust principal on the health, education, welfare, and maintenance of my wife or children. The trustees must give primary consideration to the needs and desires of my wife when making any discretionary distributions.

-When my wife dies, the remaining assets go to my surviving children, if I have any. The share of any deceased child goes to that child's children. If my wife, kids and grandchildren die before me, then look to the law of North Carolina to see would have been next in the statutory pecking order as if I had died without a will.

Comment: The credit shelter trust can have a profound effect on reducing estate taxes when the second spouse to die passes property to the children.

TENTH: I authorize my personal representative to allocate any amount of the exemption from generation-skipping transfer (GST) taxes under Section 2631(a) of the Internal Revenue Code to such property of which I am the transferor as my personal representative shall select, in the absolute discretion of my personal representative, whether or not such property passes under this will, including property transferred by me during life, whether or not I allocated any GST exemption to such property during my life, and without any duty to favor beneficiaries under this will over beneficiaries of property passing outside this will.

Whenever my personal representative allocates any amount of my GST exemption (within the meaning of Section 2631 of the Code) to property passing to a trust under this will (including without limitation a separate trust described herein), I authorize my personal representative to divide such property into two fractional shares equal respectively to the applicable fraction and the inclusion ratio (within the meaning of Section 2642(a) of the Code) that would result for such trust if said amount were allocated to such property without such division, and to allocate said exemption entirely to the share equal to said applicable fraction. Said shares shall be held and administered by my trustees as separate (but otherwise identical) trusts. The purpose of this paragraph is to provide an inclusion ratio (within the meaning of Section 2642(a)(1) of the Code) of zero for the separate trust receiving the fractional share to which the allocation is made, and if that trust is a trust described in Section 2652(a)(3) of the Code, to enable my personal representative to make the election described in that Section with respect to it as a separate trust.

Separate trusts with identical terms created pursuant to this Article may be invested in different ways and the pattern of discretionary distributions in one trust need not be followed in the other. My trustees shall be authorized to hold said separate trusts in solido or to combine them into a single trust at any time during the administration of the trusts.

Whenever two trusts hereunder are directed to be combined into a single trust (for example, because property of one trust is to be added to the other trust), if said trusts have different inclusion ratios with respect to any common transferor or have different transferors for GST tax purposes, I authorize my trustees, in the absolute discretion of my trustees, instead of combining said trusts, to administer them as two separate trusts with identical terms in accordance with the provisions that would have governed the combined trusts. If anyone adds property to a trust hereunder after my death, I authorize my trustees to hold the added property as a separate trust with terms identical to the trust to which it would have been added.

I authorize my trustees, at any time during the administration of any trust hereunder, to divide such trust into two fractional shares, which shall thereafter be administered as separate trusts with identical terms, whenever my trustees shall determine that the division may help reduce

GST tax or ease administrative problems resulting from the tax. For example, a trust with different transferors may be divided into separate trusts corresponding to the separate trusts described in Section 2654(b)(1) of the Code; a trust with an inclusion ratio between zero and one may be divided into separate trusts corresponding to the undivided trust's inclusion ratio and applicable fraction as defined in Section 2642(a) of the Code; and any trust that will be includible in the gross estate of my wife may be divided to permit my wife or the executors, administrators or legal representatives of her estate to allocate some or all of her GST exemption to one of such separate trusts, and the size of the trusts may be determined with reference to the GST exemption so allocated, so that one of such trusts has an inclusion ratio of zero with respect to my wife as transferor.

Any expenses of the administration of my estate or death taxes to be paid from my estate, pursuant to Article FIRST hereof, shall be paid first from property to which my GST exemption has not been allocated.

Summary: My personal representative has various discretionary powers to avoid the generation skipping tax, the tax on gifts to grandchildren.

ELEVENTH: The determination of my trustees as to the amount or advisability of any discretionary payment shall be final and conclusive on all persons, whether or not then in being, having or claiming any interest in such trust.

No disposition, charge or encumbrance on any income or principal of any trust hereunder or my estate by any beneficiary thereof shall be valid or binding upon my personal representative or trustees. No beneficiary shall have the right to assign, transfer, sell, pledge, encumber, anticipate or otherwise dispose of any such income or principal until the same shall be paid to such beneficiary by my personal representative or trustees. No such income or principal shall be subject in any manner to any claim of any creditor of any voluntary or involuntary creditor of any beneficiary or liable to attachment, garnishment, execution or other legal or equitable process prior to its actual receipt by the beneficiary. The right of any beneficiary to any income or principal hereunder shall be subject to all charges or deductions which my personal representative or trustees may make under law or any provision of this will. Upon making any payment of income or principal from any trust hereunder or my estate, my personal representative and trustees shall be released fully from all further liability therefor.

Summary: My trustees' decisions about discretionary payouts from the trust are conclusive. Further, I have included a provision a spendthrift provision. The trust beneficiaries can't sell or otherwise encumber their beneficiary rights. If a beneficiary wants to spend the gift, or if someone wants to take it away from them, they must first wait until the gift is actually transferred to the beneficiary.

TWELFTH: If any principal or income of my estate or any trust hereunder vests in absolute ownership (free of trust hereunder) in a minor or incompetent, my personal representative or trustees, at any time and without court authorization, may: distribute the whole or any part of such property to the beneficiary; or use the whole or any part for the health, education,

maintenance and support of the beneficiary; or distribute the whole or any part to a guardian, committee or other legal representative of the beneficiary, or to a custodian for the beneficiary (including a custodian appointed by my personal representative or trustees without court order) under any gifts to minors or transfers to minors act, or to the person or persons with whom the beneficiary resides. Evidence of any such distribution or the receipt therefor executed by the person to whom the distribution is made shall be a full discharge of my personal representative and trustees from any liability with respect thereto, even though my personal representative or trustees may be such person.

If such beneficiary is a minor, my personal representative or trustees may defer the distribution of the whole or any part of such property until the beneficiary attains the age of twenty-one (21) years, and may hold the same as a separate fund for the beneficiary with all of the powers described in Article THIRTEENTH hereof. If the beneficiary dies before attaining said age, any balance shall be paid and distributed to the estate of the beneficiary.

The word "minor" wherever used in this Article TWELFTH shall mean any person who shall be under the age of twenty-one (21) years.

Summary: If circumstances are such that a minor is going to take from this will free of trust, then my personal representative will hold or distribute that gift, in whole, or in part, to the minor as he sees fit, until the beneficiary reaches the age of 21. [This situation might arise, for example, if one or more children are minors at the time of the testator's death and the testator's spouse predeceases him.] Once the beneficiary reaches the age of 21, the beneficiary gets the remainder of his gift outright.

THIRTEENTH: My personal representative and trustees shall have all of the powers conferred by law upon fiduciaries in every jurisdiction in which my personal representative and trustees may act. In addition, the following powers are conferred upon both my personal representative and trustees, exercisable in the absolute discretion of my personal representative and trustees, as the case may be:

- (a) To retain and hold any property for any period, whether or not the property is of the character permissible for investment by fiduciaries under any applicable law, and without regard to the effect the retention may have upon diversification of investments.
- (b) To sell, exchange, grant options on, transfer or otherwise dispose of any property, real or personal, at public or private sale, for cash or on credit, secured or unsecured, at such time or times, in such manner and upon such terms and conditions as my personal representative or trustees shall deem advisable.
- (c) To invest and reinvest in common or preferred stocks, bonds, securities, mortgages or similar instruments, investment trusts, common trust funds, mutual funds, regulated investment companies, evidences of rights or interests, and other property, real or personal, domestic or foreign, whether or not the investments are

permissible for fiduciaries under any applicable law and without regard to diversification.

(d) To render liquid my estate or any trust in whole or in part, at any time and from time to time, and to hold cash or readily marketable securities of little or no yield for such periods as my personal representative or trustees shall deem advisable.

(e) To manage, maintain, repair, alter, improve, insure, partition, subdivide, lease for any term (whether or not beyond any period fixed by statute for leases made by fiduciaries or beyond the term of any trust created hereunder), mortgage, encumber, grant security interests in, or otherwise purchase, dispose of, or deal with any real or personal property, as my personal representative or trustees shall deem advisable.

(f) To abandon any property which my personal representative or trustees shall deem worthless or not of sufficient value to warrant keeping or protecting; to abstain from the payment of taxes, assessments, repairs, maintenance or other upkeep therefor; to permit any property to be lost by tax sale or other proceedings or to convey any such property for no or a nominal consideration.

(g) To form one or more corporations or limited liability companies, alone or with any person, in any jurisdiction, and to transfer assets of my estate or any trust to any new or existing corporation or limited liability company in exchange for stock or membership interests; to form one or more partnerships with any person in any jurisdiction, to have my estate, any trust or a nominee be a general or limited partner, and to transfer assets of my estate or any trust to any new or existing partnership as a capital contribution; to enter into one or more joint ventures or associations with any person in any jurisdiction, and to commit assets of my estate or any trust to the purposes of those ventures or associations; and to retain as an investment for any period any securities, partnership interests or other assets resulting from any such actions.

(h) To enter into, modify or terminate agreements with any person regarding voting rights, management, operation, retention or disposition of interests in corporations, partnerships, joint ventures, associations or other businesses of my estate or any trust, regardless of whether any agreement is in effect when that business interest is received by my personal representative or trustees; to retain and continue to operate, or permit the operation of, any business, on the terms which governed when received by my personal representative or trustees or on different terms; to invest additional sums in any business, even to the extent that my estate or any trust may be invested entirely in any business, without liability for any loss resulting from lack of diversification; to act as or select other persons (including any beneficiary) to act as directors, officers, managers or employees of any business, with reasonable compensation without regard to their being a fiduciary or beneficiary and, in the case of my personal representative or trustees, without regard to the commissions allowed by law; to discontinue any business or sell or

otherwise dispose of any interest therein on such terms and conditions as my personal representative or trustees shall deem advisable; and to make such other arrangements with respect to any business as my personal representative or trustees shall deem advisable. I exonerate my personal representative and trustees from any loss resulting from the retention or operation of any business or any depreciation in the value thereof, unless such loss shall result from the gross negligence or willful misconduct of my personal representative or trustees.

(i) To vote, in person or by general or limited proxy, any shares of stock or other securities or property; to exercise or dispose of any options, subscription or conversion rights, or other privileges or rights of any other nature; to become a party to, or deposit securities or other property under, or accept securities or other property issued under any voting trust or similar agreement; to assent to or participate in any reorganization, readjustment, recapitalization, consolidation, merger, dissolution, liquidation, sale or purchase of assets, lease, mortgage or similar instrument, election, contract, agreement, or other action or proceeding by any corporation; to deposit securities or other property under, or become a party to, any agreement or plan for any such action or proceeding or for the protection of holders of securities; to subscribe to new securities or exchange property in connection with the foregoing; to delegate discretionary powers to any reorganization, creditors, stockholders or similar committee or protective group; and to pay any assessments or expenses in connection with the foregoing.

(j) To pay, collect, adjust, compromise, settle or refer to arbitration any claim in favor of or against my estate or any trust, and to institute, prosecute or defend such legal proceedings as my personal representative or trustees shall deem advisable.

(k) To foreclose mortgages or similar instruments and bid for property under foreclosure or take title by conveyance in lieu of foreclosure; to continue investments after maturity; to modify, renew or extend any note, bond, mortgage or similar instrument, security agreement or similar instrument upon such terms and conditions as my personal representative or trustees shall deem advisable; to release obligors or guarantors or refrain from instituting suits or actions for deficiencies; and to expend any sums or use any property as my personal representative or trustees shall deem advisable for the protection of any property or interest therein.

(l) To borrow money or assets for any purpose, without personal liability therefor, from any person including my personal representative or trustees, and to secure repayment by mortgage or pledge of any property.

(m) To lend assets to any person, including a beneficiary, the estate of a deceased beneficiary, or an estate or other trust in which a beneficiary has an interest, upon any terms and conditions, with or without security, for any purpose which may or will benefit my estate, any trust or any beneficiary.

(n) To exercise, at such times and in such manner as my personal representative or trustees shall deem advisable, any right of election or other rights which from time to time may be available under the Internal Revenue Code or any other tax law, and to make such other decisions as my personal representative or trustees may deem appropriate with respect to expenses or deductions for estate or income tax purposes, the valuation of assets, the filing of any joint or other income, gift or other tax returns and the apportionment of any joint tax liability, and the payment of any tax or collection of any refund, regardless of the effect of any such action on the interest of any beneficiary of my estate and without the necessity of making adjustments or reimbursements between principal and income or among the beneficiaries of my estate.

(o) To employ and pay the compensation of accountants, attorneys, experts, investment counselors, custodians, agents and other persons or firms providing services or advice, irrespective of whether my personal representative or trustees may be associated therewith; to delegate discretionary powers to such persons or firms; and to rely upon information or advice furnished thereby or to ignore the same, as my personal representative or trustees shall deem advisable.

(p) To pay any and all costs, charges, fees, taxes, interest, penalties or other expenses of the administration of my estate, in installments with interest if desired, and except as expressly provided in Article FIRST hereof or elsewhere herein, to charge the same against the income or principal, or partly against each, of my estate or any trust.

(q) To hold property in their names as personal representative or trustees, or in their names without designation of any fiduciary capacity, or in the name of a nominee or nominees, or unregistered, or in bearer form; to deposit property with a custodian or depository; and to remove property from the State of North Carolina and keep property in other jurisdictions, without bond, surety or other security.

(r) To pay any legacy or distribute, divide or partition property in cash or in kind, or partly in kind, and to allocate different kinds of property, disproportionate amounts of property and undivided interests in property among any trusts, parts, funds or shares; to determine the fair valuation of property, with or without regard to tax basis; to determine what property is covered by general descriptions in this will; to distribute directly from my estate to beneficiaries of any trust hereunder whether or not such trust has been funded; to hold the principal of separate trusts (including trusts established under the last will and testament of my wife) in a consolidated fund and to invest the same as a single fund; and to merge any trusts (including trusts established under the last will and testament of my wife) which have substantially identical terms and beneficiaries, and to hold them as a single trust.

(s) To act or refrain from acting in all respects as if financially uninvolved, regardless of any connection with or investment in any business or any conflict of

interest between any fiduciary hereunder and my estate or any trust. No personal representative or trustee shall be disqualified or barred from exercising any power or discretion conferred by law or under this will because such fiduciary may be a shareholder, officer, director, member, partner or person in any way interested in a corporation, partnership or other person or entity affected by the exercise of such power or discretion. My personal representative or trustees may contract, in any manner that my personal representative or trustees shall deem advisable, with any such corporation, partnership, person or entity.

(t) To change the situs and/or governing law of any trust hereunder to any state my personal representative or trustees from time to time may deem desirable, and to take such further actions, including without limitation the amendment to the terms of the trust and the moving of trust assets, as may be necessary or advisable to effectuate such change.

(u) To do all acts and execute and deliver all instruments as my personal representative or trustees may deem necessary or advisable to carry out any of the foregoing powers.

My personal representative shall have the authority to determine what property shall receive basis increases pursuant to Section 1022(b) and (c) of the Internal Revenue Code and the amount of such increases. I suggest, but do not direct, that the step-up in basis be allocated to assets with readily ascertainable fair market value and that the benefit of the step-up in basis be equitably adjusted among the beneficiaries of my estate. If my wife shall survive me, she shall have the authority to direct my personal representative on the allocation of the \$3 million basis adjustment designated solely for a surviving spouse.

No fiduciary shall be liable for acts or omissions in administering my estate or any trust created under this will, except for that fiduciary's own actual fraud, gross negligence or willful misconduct. Each fiduciary shall be deemed to have acted within the scope of such fiduciary's authority, to have exercised reasonable care, diligence and prudence, and to have acted impartially as to all affected persons unless the contrary is proved by affirmative evidence. If any fiduciary becomes liable as fiduciary to any other person who is not a beneficiary in connection with any matter not within the fiduciary's control and not due to the fiduciary's actual fraud, gross negligence or willful misconduct, such fiduciary shall be fully indemnified and held harmless by my estate or by the trust created hereunder giving rise to such liability, as the case may be, from and against any liability, claim, loss, damage or expense, including reasonable attorneys' fees, that such fiduciary may sustain.

No person who deals with any fiduciary hereunder shall be bound to see to the application of any asset delivered to such fiduciary, or to inquire into the authority for, or propriety of, any action taken or not taken by such fiduciary.

Summary: I am giving the personal representatives and trustees named in my will as much authority to do their respective jobs as the law will let me give to them. In fact, I am providing them with a long list of authorities. [Giving expansive authority to fiduciaries makes it easier for

them to accomplish their tasks without having to ask the court for permission to take various actions. The key, of course, is to name trustworthy people to these positions of responsibility.]

FOURTEENTH: In addition to the other powers granted hereunder, my personal representative and trustees shall be entitled to determine the following:

- (a) Except as otherwise provided herein, my personal representative or trustees may determine, when there is reasonable doubt or uncertainty as to the applicable law or the relevant facts, which receipts of money or other assets should be credited to income or principal, and which disbursements, commissions, assessments, fees, taxes (except as provided in Article FIRST hereof), and other expenses should be charged to income or principal.
- (b) Any distributions or dividends payable in the stock of a corporation, and rights to subscribe to securities or rights other than cash declared or issued by a corporation, shall be dealt with as principal.
- (c) The proceeds from the sale, redemption or other disposition, whether at a profit or loss, and regardless of the tax treatment thereof, of any property constituting principal, including mortgages or similar instruments and real estate acquired through foreclosure or otherwise, shall normally be dealt with as principal, but my personal representative or trustees, except as otherwise provided herein, may allocate a portion of any such proceeds to income if the property disposed of produced no income or substantially less than the current rate of return on trust investments, or if my personal representative or trustees shall deem such action advisable for any other reason.
- (d) The preceding provisions of this Article FOURTEENTH shall not be deemed to authorize any act by my personal representative or trustees which may be a violation of any law prohibiting the accumulation of income.

Summary: To the greatest extent that the law allows, I grant my trustees and personal representatives the authority to determine how much of proceeds from the sale of my real estate and any stocks or similar property shall be considered principal and which shall be considered interest. These determinations may have an effect on the various taxes that may be levied.

FIFTEENTH: If my wife and I shall die in a common accident or disaster or under such circumstances that it is difficult or impracticable to determine who survived the other, then I direct that for purposes of this will she shall be deemed to have survived me. I further direct that for purposes of this will a beneficiary (other than my wife) shall be deemed to predecease me (or any other person upon whose death the interest of such beneficiary depends) unless such beneficiary survives me (or such other person) by more than thirty days.

Comment: It may be advantageous for tax purposes for the spouse with the larger estate to die first; thus, this will directs that the wife will be considered to have survived the husband if they die in a

common disaster. Often the service member spouse has the larger estate due to the greater dollar value of life insurance, principally due to SGLI. Other beneficiaries are required to outlive the testator by over thirty days to receive their gift. Thus, for these other beneficiaries, it is not necessary to determine the precise time of death in relation to the testator nor to give a gift to a person who passes away very shortly after the testator.

SIXTEENTH: I appoint my wife MARTHA WASHINGTON to be my personal representative. If my wife does not survive me, or shall fail to qualify for any reason as my personal representative, or having qualified shall die, resign or cease to act for any reason as my personal representative, I appoint THOMAS JEFFERSON as my personal representative.

Comment: As is typical, the testator's spouse is identified as the personal representative. An alternate is also identified. It is permissible, and fairly typical, to name the spouse as primary beneficiary as well as the personal representative.

With regard to the Life Insurance Trust described in paragraph Sixth, I appoint ALEXANDER HAMILTON to be my trustee. If ALEXANDER HAMILTON shall fail to qualify for any reason as my trustee, or having qualified shall die, resign or cease to act for any reason as my trustee, I appoint SAMUEL P. CHASE as my trustee.

With regard to the Credit Shelter trust described in paragraph Ninth, I appoint MARTHA WASHINGTON and ABIGAIL ADAMS as co-trustees under this will. If either of my trustees shall fail to qualify for any reason as trustee or, having qualified shall die, resign or cease to act for any reason as trustee, the other trustee may act alone as trustee.

I direct that no personal representative or trustee shall be required to file or furnish any bond, surety or other security in any jurisdiction.

Any trustee, at any time and from time to time, by an instrument in writing signed and acknowledged, may delegate any or all of the rights, powers, duties, authority and privileges of such trustee, whether or not discretionary, subject, however, to the provisions of the next paragraph of this Article SIXTEENTH, to any other trustee for such period or periods of time as may be designated in such written instrument; provided, however, that any such instrument shall be revocable at any time.

Notwithstanding anything to the contrary contained in this will, during such time as any current or possible future beneficiary of any trust created hereunder may be acting as a trustee hereunder, such person shall be disqualified from exercising any power to make any discretionary distributions of income or principal to himself or herself or to satisfy any of his or her legal obligations, or to make discretionary allocations of receipts or disbursements as between income and principal, or to make decisions with respect to tax elections or options the exercise or nonexercise of which could result in an enlargement of his or her beneficial interest hereunder. Such powers shall be exercisable, if at all, only by the other trustee acting at the time with such beneficiary. No trustee who is a current or possible future beneficiary of any trust hereunder shall participate in the exercise of any powers of my trustees which would cause such beneficiary to be treated as the owner of trust property for tax purposes.

Any personal representative or trustee, subject to the judicial or non-judicial settlement of the accounts of such personal representative or trustee, may resign at any time by an instrument in writing, signed and acknowledged in duplicate, one counterpart of which shall be delivered to the court in which this will is admitted to probate and the other counterpart of which shall be delivered to the successor personal representative or the successor trustees, as the case may be.

The term "personal representative" wherever used herein shall mean the personal representatives, executors, executor, executrix or administrator in office from time to time. The term "trustees" wherever used herein shall mean the trustees or trustee in office from time to time. Each personal representative and trustee shall have the same rights, powers, duties, authority and privileges, whether or not discretionary, as if originally appointed hereunder.

The terms "child," "children" and "issue" wherever used in this will include children and issue hereafter born.

Any provision herein which refers to a statute, rule, regulation or other specific legal reference which is no longer in effect at the time said provision is to be applied shall be deemed to refer to the successor, replacement or amendment to such statute, rule, regulation or other reference, if any, and shall be interpreted in such a manner so as to carry out the original intent of said provision.

Wherever used in this will and the context so requires, the masculine includes the feminine and the singular includes the plural, and vice versa.

Comment:

(1) The trustee and alternate trustee of the life insurance trust are designated. In this will, as is typical, the spouse is NOT identified as a trustee of the life insurance trust. The testator may be pending divorce and not wish to give the spouse control over the insurance proceeds. Or the spouse may be the primary life insurance beneficiary and the children the contingent beneficiaries. In such case, the children will not take unless the primary beneficiary, the spouse, dies before the testator.

(2) The spouse is named as the trustee as the credit shelter trust. Since she is also a beneficiary, an independent co-trustee is identified to help avoid any problems in making discretionary payments to Martha Washington.

(3) The will specifically prohibits the trustees from taking any action that would cause the IRS to consider the trustee the owner of the trust property and therefore potentially subject it to estate taxations.

SEVENTEENTH: If my wife shall not survive me or is adjudged to be incapacitated, I appoint JOHN JAY to be the guardian of the person and property of any children of mine who have not attained the age of majority. If my JOHN JAY shall fail or cease to act as guardian, I appoint ABIGAIL ADAMS as guardian. No guardian shall be required to file or furnish any bond, surety or other security in any jurisdiction. If my trustees or any trust hereunder

is the beneficiary of any life insurance policy, my trustees shall be entitled to the insurance proceeds rather than the guardian.

Summary: If my wife dies before I do or is incapacitated at the time of my death, then I want John Jay to take care of my minor children. If John Jay doesn't want the job, or dies before me, or otherwise can't do it or doesn't want to do it, I want Abigail Adams to take care of the children.

Comment: The choice of guardian is not binding on the court, although it may be very persuasive, especially if both spouses name the same guardians in their respective wills. Also, your will can not force someone to be a guardian if they don't want to do it.

EIGHTEENTH: I have served in the Armed Forces of the United States. I therefore request that my personal representative make appropriate inquiries to ascertain whether there are any benefits to which I, my dependents or my heirs may be entitled by virtue of any military affiliation. I specifically request that my personal representative consult with a retired affairs officer at the nearest military installation, the Department of Veterans Affairs, and the Social Security Administration.

Summary: My personal representative should check with the Veteran's Administration and te Social Security Administration to determine if my estate or my survivors get any benefits as a result of my military service.

Comment: In cases where the testator dies while on active duty, the deceased's military unit will also assign a casualty assistance officer who can help with these matters.

IN WITNESS WHEREOF, I, GEORGE WASHINGTON, sign my name and publish and declare this instrument as my last will and testament this ____ day of _____, 2008.

GEORGE WASHINGTON

The foregoing instrument was signed, published and declared by GEORGE WASHINGTON, the above-named Testator, to be his last will and testament in our presence, all being present at the same time, and we, at his request and in his presence and in the presence of each other, have subscribed our names as witnesses on the date above written.

having an address at:
CAMP LEJEUNE

having an address at:
CAMP LEJEUNE

MILITARY TESTAMENTARY INSTRUMENT SELF-PROVING AFFIDAVIT

STATE OF NORTH CAROLINA, COUNTY OF ONSLOW

We, GEORGE WASHINGTON and _____ 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 in the presence of the military legal counsel and the witnesses the Testator, GEORGE WASHINGTON, signed and executed the instrument as his military testamentary instrument, that he had signed willingly, and that he executed it as his free and voluntary act and deed for the purposes therein expressed. It is further declared that each of the witnesses, at the request of the Testator, in the presence and hearing of the Testator, the military legal assistance counsel and each other, signed the military testamentary instrument as witness, and that to the best of his or her knowledge the Testator was at the time at least eighteen years of age or emancipated, of sound mind, and under no constraint, duress, fraud or undue influence.

GEORGE WASHINGTON
Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by the said GEORGE WASHINGTON, Testator, and subscribed and sworn to before me by the said _____ and _____ as witnesses, this ____ day of _____, 2008.

I, the undersigned officer, do hereby certify that I am, on the date of this certificate, a person with the power described in Title 10 U.S.C. 1044a of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, or an authorized civilian attorney under Title 10 U.S.C. 1044a, and that by statute no seal is required on this certificate, under authority granted to me by Title 10 U.S.C. 1044a.

Name of Officer and Position: JACK ROSS, LEGAL ASSISTANCE ATTORNEY
Grade and Branch of Service: CAPTAIN, U.S. MARINE CORPS
Command or Organization: HEADQUARTERS AND SUPPORT BATTALION, MARINE CORPS BASE, CAMP LEJEUNE, NORTH CAROLINA.

Comment: The self proving affidavit is but required for the creation of a valid will; nonetheless, it is a useful document and will generally be prepared by military legal assistance offices and others involved in the preparation of wills. In creating the self proving affidavit, the testator and witnesses sign the will a second time, attesting to its proper execution. This second time, however, they sign the document in the presence of a notary public (or other person authorized to act as a notary, such as a military legal assistance attorney). The self proving affidavit may assist the estate to defeat a challenge by a disgruntled relative that the will is not valid due to some defect in its execution.