**Simple Will FAQs**

**Article 1.1:**

**If client is not married and has no children**

Use the following language: *"I am not married and I do not have any children."*

**If the client is divorced:**

Indicate that the client is “an unmarried woman” or “a single woman”

**Section 1.2:**

**If the testator is doing a TODI, then we indicate that here?**

Yes, you state that the testator has drafted and recorded a TODI. There is no reason to name the beneficiary of the TODI in the will.  The Property is NOT part of the will at the time of death.  For probate purposes, there is no property at the time of death (assuming the beneficiary accepts).

**If the testator is NOT doing a TODI (for example, if it is a commercial property, or already in trust),**

You simply identify the property in 1.2 and then in the "gifting section" (Section 5), you state to whom the property will go per the will.  It can be a specific bequest (legacy) or in the residuary, but it is usually specific.  If the property is already being disposed of through another manner, like a trust, identify the plan in 1.2.

**If the client does not have any real estate:**

Then delete Section 1.2 from the Will

**If the client has a mobile home:**

This is not real property. Instead, it should be included in the personal property section (Article 5)

**Article 2.1**

**Can a testator name co-executors?  There are not co-agents on POAs**

Yes, co-executors is fine. The statute does not prohibit it. Co-agents are not allowed under the statutory Power of Attorney forms.

Use the following language: *I nominate \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ to act as Co-Executors. In the event that either of the Co-Executors are unable or unwilling to act for any reason, I nominate the remaining Successor Co-Executor to act as Executor individually. In the event that neither of the Co-Executors are willing or able to act as Executor, then \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall act as Executor.*

**Can you create wording on what to do if the co-executors cannot agree?**

As for a fight among the co-executors, the client may want to name a third party as a mediator who would have the final say as a tie breaker. Using a third party may result in additional fees to the estate, or worse yet, if the co-executors don't get along, one of them could bring a court action to resolve the disputed issue.  If she does not kow if the two will agree, she may want to reconsider and have one executor with the other as a back-up.

**Article 5.1**

**How to divvy up personal property among multiple people**

When the testator wants her doll collection to be divided up between three people, it is best to either be more specific about which doll should go to each person, or include the following language:

*I give my doll collection to Annie and Bob to be divided among them in equal shares as they agree, or if they fail to agree within six months after my death, as my Executor determines.*

**Leaving a gift to a nonprofit when the client has no real assets**

This seems academic, but the testator can certainly make this part of her will.  Maybe she will win the lottery and the gift will be good!

However, you need to make sure the testator understands that payment or distribution of specific gifts under the will have priority over payment of residuary gifts. Depending upon the situation at the time of her death, this could reduce the amount left in her residuary estate.

**What to do when the testator wants to give specific gifts to a LOT of people**

You can add a parapraph to Article 5 as such:

*Letter to Executor. I give certain of my tangible personal property to the persons specified in a separately signed letter which I shall deliver to my Executor. The directions given in the letter are advisory and not mandatory, and I request, but do not require, that my wishes as set forth in the letter be observed. In the event I shall deliver more than one such letter, the letter bearing the latest date shall be valid, and any prior letters shall be void and of no effect. In the event no such letter shall have been delivered to my Executor by me, this paragraph shall be given no effect and Paragraph 5.4 of this Article shall apply to all of my tangible personal property not specifically listed in Paragraph 5.1*.

**Another way to divvy up within the residuary**

Use this language: *If any of the beneficiaries of my residuary estate does not survive me, that beneficiary’s share shall be distributed evenly to the surviving beneficiaries.*

**LIFE INSURANCE POLICIES**

You should not include Life Insurance Policies UNLESSS the life insurance beneficiary is the estate.  Then the will has to state what should be done with the proceeds.

(CDEL includes this on the Simple Will Questionaire for two reasons:  to help CDEL determine if the person qualifies for services based on low income and also so that the attorney can confirm that the client has a benefit stated in those instruments.)

**If the life insurance beneficiary is the estate,** and the client would like the proceeds from the life insurance to be first used to pay off any expenses, use this language in Section 5.3 ***"****The residuary estate includes, without limitation, the proceeds from any life insurance policy under which my estate is beneficiary, after proceeds from any such policy are used to make any payments required under Section 3.1 above."*

**401(k) ACCOUNTS**

401(k) accounts are beneficiary designated accounts and pass outside of probate just like life insurance and pensions.   Talk with the client to make sure he has a named beneficiary for the 401(k) account.

 **IF the client specifically does NOT want anything to go to a certain relative**

It is vital to specifically disclaim family members who would have a right to take under intestate succession but who is being excluded from the will. Use this language: *I specifically disclaim, and decline to make any gifts, devises or bequests to my other brothers and sisters, Jane Doe, William Doe and Marge Doe, or their descendants, except as expressly provided*

 **If there is a possibility that the beneficiary may be still be a minor when the testator dies.** Use this language:

*If a beneficiary is a minor at the time of distribution of the property, the person acting as guardian of the minor child shall take receipt for and hold his or her share of the property in trust for the benefit of the minor child, and shall deliver the property to the child when he or she reaches the age of 18 years.*

**Article 5.4**

**Why does the beneficiary have to live an additional 30 days?**

To avoid the Simultaneous Death Act in Illinois (755 ILCS 5/3), which can be confusing in the event of simultaneous death. 30 days was chose because it is one of the standard units of time.

**Witnesses**

**Why is a will not notarized?  If a POA signature is notarized, why not a will signature.**

*The simple answer is because 1) the statute does not call for wills to be notarized and 2) they just never have been notarized.  The Self Proving Affidavit is notarized. The Power of Attorney for Property must be notarized per the statute.  It is a necessary requirement of properly executing a Power of Attorney for Property.*

**TODI FAQs**

**Who do we put down in the MAIL TO on the TODI?**

On the TODI, it should be owner of the property.

**And on the death affidavit, who is the taxpayer?**

In the Death Affidavit it should be left blank. It would be completed by the beneficiary at the time of recording the Death Affidavit.

**Where to find a real estate description for the TODI?**

Cook County Property Tax Portal – cookcountypropertyinfo.com – here you can easily find the PIN number by inserting the address

Cook County Recorder of Deeds – cookrecorder.com – once you have the PIN go here to find a previous deed or mortgage document that includes the legal description

**If you cannot find the description of the property on the website**

If the property was transferred before 1984 then there would be nothing on the website. Then, see if the client has a copy of the deed.

If they don’t, complete the TODI leaving this out and CDEL will have an intern find the description at the Cook County Recorder of Deeds.

**If the client has more then one property that falls under a TODI:**

Then you can use one TODI and include multiple PINS. This will save the client money when filing

**PROPERTY IN JOINT TENANCY: You still need a TODI**

When the property is owned as a joint tenant you should still do a TODI in case our client survives the other joint tenant.  This is especially important when the joint tenants are close in age.  The language we use is:

*On this date, \_\_\_\_\_\_\_\_\_\_\_, 2017,* ***CLIENT****, (****marital status)*** *residing at* ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****executes this transfer on death instrument. I own the following residential real estate in joint tenancy with rights of survivorship with* ***JOINT TENANT****.  Should I survive* ***JOINT TENANT****, I* ***CLIENT*** *will then transfer upon death the following residential real estate in its entirety:*

**If we are representation BOTH joint tenants** (for example spouses) we can do one TODI for both clients at once so long as they both wish to leave the property to the same beneficiary upon death. In that case, use this language:

On this date, \_\_\_\_\_\_\_\_\_\_\_, 2017, **CLIENT 1,** (**married**) residing at **address** and **CLIENT 2 (married), residing at address** execute this transfer on death instrument. **Client 1 and Client 2** own the property located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as joint tenants. Upon the death of both Client 1 and Client 2,we transfer upon death the following residential real estate in its entirety:

This will save on recording costs.

**What to do if the property is underwater (more is owed on it then it is worth)**

You should still draft a TODI and if the property is still not worth anything, the beneficiary can not take ownership of it when the time comes by filing a disclaimer.

**TODIs WITH PROPERTY BEING LEFT TO MORE THEN ONE PERSON**

**How Is It Being Left:** It is important to note how the property will be left to two or more persons - whether as joint tenants with right of survivorship or as tenants in common.

* Joint Tenants: if one dies, the whole property goes to the other
* Tenants in Common: can do this in equal or unequal shares. If one of them die, their gift goes to whoever would get it under probate law… not necessarily to other person named.

**Back up language for the TODI, when the property is being left to more than one person: Choose the one most suitable to the client’s situation**

* "Should either beneficiary predecease me, then the surviving beneficiary shall take the residential real estate in its entirety."
* "Should either beneficiary predecease me, then the descendants of the deceased beneficiary shall share the deceased beneficiary's portion equally." (Or you can just use per stirpes)
* "Should any beneficiary predecease me, then the surviving beneficiaries shall share the deceased beneficiary's portion equally."
* Should \_\_\_\_\_\_\_\_ predecease me, then his/her share shall go to (other specifically name beneficiary).