

# **Pour-Over Will of S2 Test**

I, S2 Test, a resident of \_\_\_\_\_, [UNANSWERED: MC Client state], revoke any prior Wills and codicils made by me and declare this to be my Pour-Over Will.

## **Article One Family Information**

I am married to S1 Test. Any reference in this document to *my husband* is a reference to S1 Test.

I have no children.

## **Article Two Distribution of My Property**

### **Section 2.01 Pour-Over to My Revocable Living Trust**

I give all of my probate estate, excluding any property over which I have a power of appointment, after expenses and taxes are paid under this Will, to the then-acting Trustee of the S1 Test and S2 Test Living Trust dated \_\_\_\_\_, 20\_\_\_\_, and executed before this Will, to be added to the property of that trust. I direct that the Trustee administer the property according to the trust and any amendments made prior to my death.

### **Section 2.02 Alternate Disposition**

If the trust referred to in Section 2.01 is not in effect at my death, or if for any other reason the pour over fails, I specifically incorporate by reference all the terms of the trust into this Will. I direct my Personal Representative to then establish a new trust under the provisions of that trust and distribute the remainder of my estate, excluding any property over which I have a power of appointment, to that Trustee to administer as provided in the trust.

If incorporation by reference fails for any reason, I direct my Personal Representative to distribute the remainder of my estate, excluding any property over which I have a power

of appointment, to my husband if my husband survives me. If my husband does not survive me I direct my Personal Representative to distribute the property to my descendants, *per stirpes*.

## **Article Three**

### **Designation and Succession of Fiduciaries**

#### **Section 3.01     Personal Representative**

## **Article Four**

### **Personal Representative Powers**

My Personal Representative may, without prior authority from any court, exercise all powers conferred by my Will, by common law, or by the California Probate Code, Division 7, Part 5, beginning with Section 9600 or other statute of the State of California or any other jurisdiction whose law applies to my Will. My Personal Representative has absolute discretion in exercising these powers. Except as specifically limited by my Will, these powers extend to all property held by my fiduciaries until the actual distribution of the property.

## **Article Five**

### **Administrative Provisions**

#### **Section 5.01     Court Proceedings**

Any trust established under my Will will be administered in a timely manner; consistent with its terms; free of active judicial intervention; and without order, approval, or other action by any court. The trust will be subject only to the jurisdiction of a court being invoked by the Trustees or by other interested parties, or as otherwise required by law.

#### **Section 5.02     No Bond**

I direct that no Personal Representative be required to give any bond in any jurisdiction. But if a bond is required by law or by court determination, no sureties will be required on the bond.

### **Section 5.03 Compensation and Reimbursement**

Any fiduciary serving under my Will is entitled to reasonable compensation commensurate with services actually performed. In addition, any fiduciary serving under my Will is entitled to reimbursement for reasonable expenses incurred.

## **Article Six Taxes, Claims, and Expenses**

### **Section 6.01 Payment of Death Taxes, Claims, and Expenses**

The Trustee of the S1 Test and S2 Test Living Trust is authorized to pay expenses incurred for my funeral and for the disposition of my remains, claims against my estate, and expenses of estate administration. Accordingly, I direct my Personal Representative to consult with the Trustee to determine which expenses and claims should be paid by my Personal Representative from property passing under my Will, and which expenses and claims should be paid by the Trustee from the S1 Test and S2 Test Living Trust.

I direct my Personal Representative to follow any instructions contained in the S1 Test and S2 Test Living Trust in making any tax elections, including the allocation of my GST Exemption and any elections relative to the *deceased spousal unused exclusion amount* as defined and to the extent and amount allowable under Sections 2010(c)(4) and (5) of the Internal Revenue Code, all as my Personal Representative deems appropriate under then prevailing circumstances. My Personal Representative will suffer no liability for making or not making any tax election in good faith to any person, including any person not yet in being, whose interest may have been affected.

Any taxes imposed on property passing under and outside my Will because of my death will be apportioned and paid under the provisions of the S1 Test and S2 Test Living Trust, and I incorporate the tax apportionment provisions of the S1 Test and S2 Test Living Trust as part of my Will.

No death taxes may be allocated to or paid from property that is not included in my gross estate for federal estate tax purposes, or that qualifies for the federal estate tax marital or charitable deductions.

### **Section 6.02 Tax and Administrative Elections**

My Personal Representative may exercise any available elections under any applicable income, inheritance, estate, succession, or gift tax law.

## **Article Seven**

### **General Provisions**

#### **Section 7.01      Adopted and Afterborn Persons**

A legally adopted person in any generation and that person's descendants, including adopted descendants, have the same rights and will be treated in the same manner under this Will as natural children of the adopting parent if the person is legally adopted before turning 18 years old. If an adoption was legal in the jurisdiction it occurred in at that time, then the adoption is considered legal.

A fetus *in utero* that is later born alive will be considered a person in being during the period of gestation.

#### **Section 7.02      Applicable Law**

The validity and construction of my Will will be determined by the laws of California.

#### **Section 7.03      Contest Provision**

If any person directly or indirectly attempts to oppose the validity of my Will or my Revocable Living Trust, including any amendments to my trust, or commences, continues, or prosecutes any legal proceedings to set my Will or Revocable Living Trust aside, then that person will forfeit their share, will cease to have any right or interest in my property, and will be considered to have predeceased me for the purposes of my Will.

However, during any period in which the laws of the state of California govern the applicability or validity of this provision, Section 21311 of the California Probate Code will apply, and my Personal Representative may only enforce this provision against

a direct contest brought by any beneficiary without probable cause,

any pleading by any beneficiary to challenge a transfer of property on the grounds that the transferor did not own the property at the time of the transfer, or

any filing of a creditor's claim or prosecution of any action based on the filing of such a claim.

The terms "direct contest" and "pleading" have the same meanings as set forth in Section 21310 of the California Probate Code. My Will and any trusts created in my Will are "protected instruments" as provided in Section 21310(e) of the California Probate Code.

#### **Section 7.04 Construction**

Unless the context requires otherwise, words denoting the singular may denote the plural, and words indicating the plural may denote the singular. As the context requires, words of one gender may denote another gender.

#### **Section 7.05 Headings and Titles**

The headings and paragraph titles are for reference only.

#### **Section 7.06 Shall and May**

Unless otherwise specifically provided in this document or by the context in which used, the word *shall* is used to impose a duty or to command, direct, or require, and the word *may* is used to allow or permit, but not require. In the context of our Trustee or my Personal Representative, the word *shall* is used to impose a fiduciary duty on our Trustee or my Personal Representative. When I use the word *may*, I intend to empower our Trustee or my Personal Representative to act with sole and absolute discretion unless otherwise stated in this document.

#### **Section 7.07 Slayer Shall Not Benefit**

If a beneficiary (including, but not limited to, a primary beneficiary, a current beneficiary, remote beneficiary, contingent beneficiary, or remainder beneficiary) under my Will: (i) was a principal or an accomplice in willfully bringing about my death, the death of a descendant of mine, or the death of another beneficiary of my Will; and (ii) but for the application of this section, a result of that death would be for the beneficiary to acquire, enlarge, or accelerate a benefit for themselves under my Will; then such beneficiary shall be deemed for all purposes under my Will to have predeceased me and died without issue.

This section does not apply to deaths resulting from the lawful exercise of a medical power of attorney, a lawful decision to withhold medical treatment, or the lawful exercise of the beneficiary's right of self-defense, defense of others, or any other legal justification.

In determining whether a beneficiary was a principal or an accomplice in willfully bringing about my death, the death of a descendant of mine, or the death of another beneficiary of my Will, my Personal Representative shall consider the facts and circumstances surrounding the death, including, but not limited to, recorded confessions, plea bargains, settlements, and criminal or civil trial verdicts.

If, and for so long as determined, the beneficiary is not competent to stand trial, the beneficiary shall be deemed incapacitated under my Will.

If found not guilty by reason of insanity, the beneficiary shall be deemed a slayer and this section shall apply.

### **Section 7.08 Survivorship**

For purposes of this Will, if I survive my husband by any period of time or if the order of our deaths is unknown, then I will be considered to have survived my husband. Any other beneficiary will be considered to have predeceased me if the beneficiary dies within 45 days after my death.

### **Section 7.09 Severability**

If any part of this instrument is determined to be void or invalid, the remaining provisions will continue in full force and effect.

I, S2 Test, sign my name to this instrument on \_\_\_\_\_, 20\_\_\_\_ and do declare that I sign and execute this instrument as my Pour-Over Will, that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence. I ask the persons who sign below to be my witnesses.

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S2 Test

Each of us declares under penalty of perjury under the laws of the State of California that on the day and year written below, S2 Test, published and declared this instrument to be her Pour-Over Will, that she signed this Will in our presence, that each of us, in her presence and at her request, and in the presence of each other, have signed our names as attesting witnesses. We also declare that each of us is now more than eighteen years of age, is a competent witness, and resides at the address set forth after his or her name.

We also declare that at the time of our attestation of this Will, S2 Test was, to our best knowledge and belief, of sound mind and memory, eighteen years of age or older, and that this Will was not procured by duress, menace, fraud, misrepresentation, constraint or undue influence.

Executed on \_\_\_\_\_ in the County of \_\_\_\_\_, California.

\_\_\_\_\_, Witness

\_\_\_\_\_, Witness

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