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Check List and Model Will for Average-Sized Estates

Institute on Problems of the Average-Sized Estate

FOREWORD

On May 16 and 23, 1950, the Denver Bar Association sponsored a legal institute devoted to the everyday problems of handling an average-sized estate. The institute was prepared under the direction of Co-chairman Charles H. Haines, Jr., and Wayne D. Williams. The speakers were Hubert D. Henry, Merrill A. Knight, Barkley L. Clanahan and John L. Griffith. A summary of their remarks is presented here, together with a short comment by the learned moderator, the Hon. C. Edgar Kettering of the Denver County Court.

Mr. Henry began the institute on May 16 with a discussion of will-drafting. He took as his client, the hypothetical Mr. Abe Gottrocks, an old friend of his Westminster Law School classes. In this instance, Mr. Gottrocks had a wife and three minor children, and an estate valued at approximately \$30,000, including the family home.

In preparing Mr. Gottrocks' will, Counselor Henry used a check list that he feels will cover most of the cases which come into a lawyer's office. From the many available model wills, Mr. Henry has drawn the simple provisions which, in his judgment, will meet the needs of the client with the average-sized estate, this time, Mr. Gottnotsomyrocks. Mr. Henry called attention to another familiar model will for use in the disposition of larger and more complicated estates, that of John Isekore which appeared in the August, 1947 issue of DICTA (24 Dicta 168).

CHECK LIST AND MODEL WILL FOR
AVERAGE-SIZED ESTATES

HUBERT D. HENRY
of the Denver Bar

1. Wills have their own peculiar form, different from living trust agreements and other instruments.
2. The testator and all beneficiaries should be named accurately, and all property given accurately named or clearly described.
3. If testator does not wish legacies charged with inheritance taxes, this must be provided in will.
4. It is often desirable that the real property used as a home, the household goods and personal effects be given outright and specifically, rather than left in trust.
5. Be sure that all of testator's property is given. Does testator have a power of appointment to be exercised?
6. Are after born children provided for or clearly excluded?
7. Is testator under any contract or agreement to make a will?
8. Are there alternative provisions in case of widow's election?
9. Does the testator contemplate marriage? Will is revoked by marriage unless it otherwise expressly provides.
10. Be sure that testator has provided funds for the payment of estate and inheritance taxes, debts and expenses of administration. Be sure that he has not given away more than his *net* estate after payment of these items.

11. Trust provisions.
 - a. Are the provisions for disposition of income and principal such that the will will carry out adequately the testator's wishes, even in face of a radical change in conditions after his death?
 - b. Are the remainders clearly tied up?
 - c. Is the rule against perpetuities violated?
 - d. Does the trustee have adequate powers of sale, investment, management, allocation, voting stock, participation in re-organizations, etc.?
 - e. Should the testamentary trust be removed from the jurisdiction of the probate court?
 - f. If not, may the trustee exercise his powers without order of court?
 - g. If under court jurisdiction, is surety bond waived?
 - h. If more than one trustee, what powers may be exercised by less than all trustees?
 - i. Provisions for successor trusteeship.
 - j. If termination of trust depends on age of any person, state that person's birth date in will.
12. Give to executor same powers given to trustee.
13. Give executor's powers to office, so they may pass to successor.
14. Make provisions for alternative executor.
15. Is executor relieved from furnishing surety on bond?
16. Be sure that will is properly executed, and that no person named in will as beneficiary or fiduciary is a witness.
17. There must be at least two witnesses. Have a full and complete attestation clause.
18. Advise testator to put will in a safe place. Wills may be deposited with county court. If bank is named executor, will may be deposited with bank. A safe deposit box may be used. Don't keep it yourself if you can avoid it—too much responsibility.

LAST WILL AND TESTAMENT OF ABE GOTTRUCKS

I, Abe Gottrocks, of Denver, Colorado, make, publish and declare this to be my Last Will and Testament, revoking all wills, testaments and codicils heretofore made by me.

I.

I direct my executor to pay my lawful debts, funeral expenses and expenses of my last illness. I direct my executor to pay all inheritance, estate, legacy, succession and other death taxes, payable in respect of my estate or of any devise, legacy or distribution under this will, or levied by reason of my death, whether or not the property, transfer, or proceeds with respect to which the

said taxes are levied are a part of my estate at my death, such taxes to be paid by my executor as an expense of administration and without reimbursement to my estate by or deduction from the share of any beneficiary, legatee, devisee or transferee.

II.

I devise and bequeath to my beloved wife, Betty Gottrocks, all and every part of my estate, of whatever kind and wherever situated, except as above provided in paragraph I; provided, however, if my wife shall not survive me, or, if surviving me does not live until complete distribution of my estate, every part of my estate not distributed to my wife during her lifetime shall be distributed as provided in paragraph III hereof.

III.

I devise and bequeath every part of my estate, of whatever kind and wherever situated, not paid or distributed under paragraph I or II, to my trustee hereinafter named, in trust upon the following trust:

1. The trustee shall pay, from the income or principal of the trust such amounts as it in its sole and uncontrolled discretion deems advisable for the care, support, maintenance and education of my children, Harold, born January 17, 1934, Heddie, born April 19, 1938, and Frank, born August 12, 1942, and such other children as may be born to me after the execution of this will. Such payments may be made by my trustee directly to my said children, or to any person, association, corporation or institution having any charge or expense for the care, support, maintenance and education of any of my said children. In making said payments my trustee shall not be required to equalize payments among my said children but shall pay such amounts, at such times, and for such child as it in its discretion deems advisable, having in mind the age of my said children, their ability to support themselves, the amount of the trust fund and the time during which it may be necessary for the trust to be used for these purposes. After all of my children have attained the age of 21 years my trustee shall distribute the balance then remaining in its hands to my children equally.

2. In the event of the death of all my children prior to final distribution of the trust, I direct my trustee, upon the death of the last survivor of my said children, to distribute the balance of the trust then remaining in its hands to the persons who would be my heirs at law had I died at the time of said distribution.

IV.

I appoint the Security Bank of Denver, Colorado, executor and trustee of this will and direct that my said executor or trustee

be allowed to serve without giving surety on its bond in either capacity.

V.

My executor and trustee, in each capacity, shall have full and unrestricted discretionary authority to take, collect, sue for, compromise, adjust, hold, manage, control, improve, sell, assign, transfer, convey, deliver, contract with respect to, or otherwise deal with, without application to or order of court, any property, real or personal, constituting a part of my estate or trust estate, without any duty upon any person dealing with it to see to the application of any money or other property delivered to it; to make allocations or distributions to beneficiaries in cash or in kind, or partly in cash and partly in kind, at the market value at date of distribution as determined by it; to hold any property which I may own at the time of my death for such time as it deems wise, even though such property is not of a kind usually selected by trustees as a trust investment, and even though such retention may result in inadequate diversification; to invest and reinvest all or part of the principal of the estate or trust estate in real or personal property or interests therein, such as common trust funds, without limiting such investments to the classes of property which are now or may hereafter be prescribed by law for the investment of trust funds; to pay, compromise or adjust any claim or liability; and generally to have such powers with regard to the assets of the estate or trust estate as an individual has with respect to his own property.

VI.

Upon the death of my wife I direct that my sister, Joan Smith, shall be the guardian of the persons of my minor children and shall have exclusive custody of them.

IN WITNESS WHEREOF, I sign my name at Denver, Colorado, this 10th day of May, 1950, in the presence of the witnesses signing as such, who, at my request, in my presence, and in the presence of each other, sign as attesting witnesses hereto.

ABE GOTTRUCKS.

The foregoing instrument was signed, published and declared by Abe Gottrocks, while of sound mind and memory and under no constraint, as and for his Last Will and Testament, in our presence, and we, in his presence, at his request, and in the presence of each other, subscribe our names as attesting witnesses the day and year above written.

JOHN DOUGH, Denver, Colo.
HAVA HART, Denver, Colo.