MICHAEL A. KOENECKE
ATTORNEY AND COUNSELOR
P.O. BOX 830190
RICHARDSON, TEXAS 75083-0190
972-387-2904 MIKE@KOENECKELAW.COM

ESTATE PLANNING DOCUMENT SIGNING INSTRUCTIONS

1. General Instructions. I normally carry out estate planning document execution ceremonies myself, because it is *very important* that they be done correctly. Particularly with Wills, if the instructions are not followed to the letter, the Wills may not be able to be probated, or at least will have to have witnesses appear. So PLEASE follow these instructions to the letter, and carefully. If at all possible, please call me at the above number, and I will be happy to walk you through this process by telephone.

2. Requirements. Besides the Notary Public, you will need two (2) witnesses. The witnesses can be relatives, but they should not be anyone who is a beneficiary under your Will. Make sure everyone has pens for signing (preferably using colored ink, so it is easily distinguishable from copies), and identification for the Notary.

3. Document Preparation: Names and Addresses of Witnesses. The names of the witnesses, and their addresses where indicated, need to be printed on: (a) the last page of the Wills, underneath the testator's signature line, (b) in the notary clause below the testator's signature line, (b) on the last page of the Declarations of Guardian, in the paragraph after "Declarant's" signature, and (c) on the "Will Execution Ceremony" documents, in the body of the document.

4. Document Preparation: Dates of Documents. The dates of signing the documents must be added on *every* document, in every place they appear: on the Wills, the date must be printed in on the last page above the testator's signature and above the witnesses' signatures, and on the Self Proving Affidavit *twice* in the body of the affidavit, and once in the notary clause below the affidavit. On the "Will Execution Ceremony" documents, in the title. On all other documents, in two places: on the last page above the person's signature and above the notary's signature.

5. Notary Preparation. The Testator (husband) and Testatrix (wife) and their two witnesses should show their identification to the Notary Public, who will enter the relevant information in his or her book.

6. Signatures. Many people wonder how they should sign their names: since your full name is listed, do you really have to write "John Jacob Jingleheimer Smith" out? The answer is **no**: use your usual and customary signature; the same way you would sign a check. Your signature should be consistent with all other documents you have signed.

7. Will Signing. Will signing needs to follow a specific ceremony, in order to make the Self Proving Affidavits effective and enforceable. The signing on the Wills by the Testator, Testatrix, and witnesses serves both as a witnessing and as an affidavit, making them "self-proving:" no witness will need to show up in court to prove that the Wills were properly signed, that the Testator and Testatrix were over age 18 and of sound mind, and

so on. The Testator, Testatrix, witnesses, and Notary Public must all be in the same room together through this process, and any distractions should be avoided. *This is intended and designed to take the place of your testifying in a court of law, so please take it seriously.* I have provided two "Will Signing Ceremony" checklists to walk you through the process, which the notary or someone other than the signers or the witnesses should keep track of. The questions on these are statements which need to be made by the Testator and Testatrix in front of the witnesses, which I normally ask when I conduct a Will signing ceremony. Go through them in order. Note that after the part starting "Explain that signing this will serves both as witnessing and as an affidavit…" the notary must take the oath of the Testator, Testatrix, and witnesses: "Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?" Go through these issues; after the Testator and Testatrix sign, have the witnesses answer the questions indicated, and *then* have the witnesses sign and the notarization.

8. Signing Other Documents. You can then proceed to sign the rest of the documents. Notes about specific documents:

   a. **Declarations of Guardian**. These are the only other ones which need to be witnessed; all the others only need to be signed and notarized.

   b. The **Appointment of Agent for Disposition of Remains** does *not* need to be signed by the agents: that is done after the principal is deceased, to show the funeral home that the appointment has been accepted.

   c. The **Statutory Durable Power of Attorney** needs to be customized by the signer: first, by affirmatively initialing those powers he or she wants to grant (I usually advise initialing "(O) ALL OF THE POWERS…"); second, by granting specific authorities for particular things on page 2 (these can all be left alone if you do not want to grant those particular extra powers); and, third (on page 3) by making the document either (A) effective immediately or (B) effective only on disability. I usually advise clients to leave that blank, as the default is "effective immediately:" if it is only effective on disability that means your agent will have to prove you are incapacitated for the document to be useful.

   d. The **Directive to Physicians** ("Living Will") also needs to be customized by the signer: you should initial one choice about treatments desired and cross out the other. You can add more specific requests if you like. Definitions of terms like "irreversible condition" are on the last page of the document.

   e. **Anatomical Gift Declarations** (if desired, and included) are general forms which need to be customized before signing too. They can be used to express your intent to donate body tissue or organs, or NOT to donate (see Part 1 on the document).

f. **Prenuptial Agreement.** For signing the Prenuptial Agreement, unless you actually have separate lawyers other than myself, leave the spaces in Section 2.04 and in the attorney certifications after your signatures BLANK. To ensure that your wishes about separate and community property are enforceable, the Prenuptial Agreement will need to be filed in your county records. You might want to do that after you marry, and sign the Post-Marriage Affirmation.

g. **Living Trust and Certificate of Trust.** Finally, sign the Living Trust agreement in all places, having your signatures notarized; on the Certificate of Trust, fill in the date and a Social Security Number (since it is revocable, it does not need its own taxpayer ID number), and sign that before the Notary.

9. Additional Documents. In the smaller envelope, labeled "Additional Documents and Resources," are some additional documents to go with your estate planning documents. First, there are four copies of a Memorandum of Wishes: these are for you to fill out to indicate who you would like to get personal items. They are not intended to be binding, but rather suggestions for your executor, and get the job done in nearly all cases. Second, there are two copies of Funeral and Disposition Instructions: these are for you to indicate your wishes. Third, there is an Estate Organizers for you: this is intended to give you a handy way to catalogue your assets, list where documents are located, and list important people and contact information for your executor and/or trustee. Fourth, there is a Contact Information Sheet with current addresses and room for updates. Fifth, there are two documents for those dealing with an imminent or recent death: one titled *When There Is a Death in the Family,* which gives some instructions and advice for those facing a recent death, and another titled *Death Has Occurred: Checklist and Information Sheets*, which is a more detailed set of instructions; both of these should be kept with your Wills. Sixth is a closing letter with some instructions and recommendations about your documents and estate plan. Finally, there is a flash drive containing Acrobat (PDF) copies of all these documents.

10. Final Notes. Your original documents should be kept in the large envelope provided, and stored in a safe place: ideally, a safe deposit box (to which someone *besides* you and your spouse should have access), and the electronic copies on the flash drive used for reference. Please contact me with any questions.

Sincerely yours,

Michael A. Koenecke