

# LAST WILL AND TESTAMENT OF

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## DISCLAIMER

This enclosed will form is prepared as a basic format for use by Muslims in the realization of their faith. A great deal of effort has been put into making this form a very good document from the legal as well as Shari'ah points of view. Credits go to the Muslim Student Association of the US and Canada and the Islamic Society of North America for their work in developing a prototype of this will. The Islamic Education & Services Institute assumes no legal responsibility and carries no liability in relation to the use of this form.

The IESI does recommend that every adult Muslim living in the west have his/her Last Will written and kept in a secure place. The IESI, being a religious organization, cannot be named as an executor or a guardian in any will and will not accept any such delegation.

**In the name of Allah, the most beneficent, the most merciful,**

## LAST WILL AND TESTAMENT

I, \_\_\_\_\_, presently residing at

\_\_\_\_\_ being of sound mind and memory, do hereby revoke any and all former Wills and codicils made by me, and do make, ordain, publish and declare this my **LAST WILL AND TESTAMENT**.

## PREAMBLE

I bear witness that there is no deity but Allah, the One, the Merciful, Almighty God--Creator of the heavens and the Earth and all therein--God of Abraham, Moses, Jesus, Muhammad, and all the Prophets, mercy and peace be upon them. He is One God and He has no partner. And I bear witness that the Prophet Muhammad is His servant and His messenger and last of all the Prophets, mercy and peace be upon them all. I bear witness that Allah is the Truth, that His promise is Truth, that the Meeting with Him is Truth. I bear witness that Paradise is Truth and that Hell is Truth. And I bear witness that the coming of the Day of Judgment is Truth, there is no doubt about it, and that Allah, who is exalted above all deficiency and imperfection, will surely resurrect the dead of all generations of mankind, first and last and those in between. This is my counsel to my relatives and friends, my Muslim brothers and sisters, and all those who remain after me, that they strive to be true Muslims, that they submit to their Creator, may He be exalted, and worship Him as He alone is to be worshipped, fear Him as He alone is to be feared, and love Him and His Prophet with a complete love that is rivaled by nothing besides them. Let them obey God and hold fast to His laws. Let them die only in a state of complete submission to His will. I remind them that no man or woman dies before his/her time. The exact duration of each life span is precisely determined before we are born, by the All-

powerful Creator, may He be exalted. Death is tragic only for the one who lived out his/her life in self-deception without submitting to the Creator and preparing for the final return to Him. So, do not preoccupy yourself with my death, but instead, make the proper preparations for your own. Maintain patience and self-composure as the religion of Islam requires. Wailing and excessive lamentation is forbidden by the Creator, and it only reflects lack of understanding and dissatisfaction with the will of the Creator, may He be exalted. Finally, I ask my relatives, friends, and all others, whether they hold the same beliefs as mine or not--to honor my Constitutional rights to those beliefs. I ask them to honor these documents which I have made, and not try to obstruct it or change it in any way. Rather, let them see to it that I am buried as I have asked and let my properties be divided as I wanted them to be divided.

## **ARTICLE 1: FUNERAL AND BURIAL RITES**

I ordain that no autopsy or embalment be done on my body unless required by law, that without unjustified delay my body be washed, wrapped with cloth free of any ornaments and other articles, prayed for, and then buried, which all shall be done by Muslims in complete accordance with Islamic religion.

**A.** I hereby nominate and appoint \_\_\_\_\_ residing at \_\_\_\_\_, to execute these and other necessary provisions for my Islamic funeral and burial. In the event that the above named person shall be unwilling or unable to execute, I nominate and appoint \_\_\_\_\_ residing at \_\_\_\_\_, And in the event that this person shall be unwilling or unable to execute, I nominate and appoint the Islamic center in the area I die at to execute these provisions of funeral and burial.

**B.** In the event of legal difficulties in the execution of this article, I direct the above-named persons to seek counsel from the Islamic Association Of North America or the Local Islamic association..

**C.** I ordain that absolutely no non-Islamic religious service or observance shall be conducted upon my death, or to my body.

**D.** I ordain that no pictures, crescents and stars, crosses, or any music be involved at any stage of the process of conducting my burial or ever be placed at the site of my grave.

**E.** I ordain that my body shall not be transported over any unreasonable distance from the locality of death, particularly when such transportation would necessitate embalming, unless when long distance transportation is required to reach the nearest Muslim cemetery, or if decided upon by my Muslim family.

**F.** I ordain that my grave be dug deep and in accordance with the specifications of Islamic practice; that it faces the direction of the qiblah (the direction of the city of Mecca in the Arabian peninsula to which Muslims turn during prayers).

**G.** I ordain that my body shall be buried without casket or any other encasement that separates the wrapped body from the surrounding soil. In the event that the local laws require casket encasement, I ordain that such encasement be of simple, most modest, and least expensive type possible, and I further ordain that he encasement be left open during burial and filled with dirt unless prohibited by law.

**H.** I ordain that my grave be leveled with the ground or slightly mounded with no construction of any kind. The marking, if necessary, should be a simple stone or any simple marker, merely to indicate the presence of a grave. There shall be no inscriptions or symbols on the said marking.

## **ARTICLE 2: DEBTS AND EXPENSES**

**A.** I direct that all trust properties shall be returned to the rightful owners. I further direct that my executor hereafter named first apply the assets of my estate to the payment of all my legal debts, including such expense incurred by my last illness/accident and burial as well and the expenses of the administration of my estate. I direct said executor to pay any outstanding huquq Allah (obligations to Allah), which are binding on me including unpaid zakah (alms), kaffarat, or unperformed hajj (pilgrimage), if it could have been a duty upon me.

**B.** I direct that all inheritance, estate, and succession taxes (including interest and penalties thereon) payable by reason of my death shall be paid out of and be charged generally against the principal of my residuary estate without reimbursement from any person; except that this provision shall not be construed as a waiver of any right which my executor has, by law or otherwise, to claim reimbursement for any such taxes which become payable on account of property, if any, over which I have a power of appointment.

## **ARTICLE 3: CHARITABLE CONTRIBUTIONS AND TESTAMENTARY TRANSFER**

I direct my executor to pay the following charitable contributions to the named persons and organizations:

Name and address of the person or organization	Percent of remainder of Estates after Execution of Article 2
1.	<b>Percentage:</b>
2.	<b>Percentage:</b>
3.	<b>Percentage:</b>
4.	<b>Percentage:</b>
5.	<b>Percentage:</b>

## **ARTICLE 4: DISTRIBUTION OF REMAINDER OF MY ESTATE**

**A.** I direct, devise, and bequeath all the residue and remainder of my estate after execution of Articles 2 and 3 only to my Muslim heirs whose relation to me, whether ascending or descending, has occurred through Islamic or lawful marriage at each and every point. The distribution of the residue and remainder of my estate shall be strictly in accordance with **SCHEDULE A: THE ISLAMIC DISTRIBUTION OF THE ESTATE.**

**B.** I direct that no part of the residue and remainder of the estate after the execution of Articles 2 and 3 shall be inherited by any non-Muslim relative whether this relative is a kin or an in-law, spouse, parent, or child. I further direct and ordain that any non-Muslim relative be disregarded and disqualified in the application of the named schedule.

**C.** Should I die as a result of murder, I direct that the adjured murderer, principal or accessory in the murder, shall be disqualified to receive any part of my estate.

**D.** I direct that no part of my estate shall be given to relatives whose relationship to me, ascending or descending, has occurred through non-Islamic and/or unlawful marriage, or through adoption, at each and every point, except the following:

1. Legatees specifically named in Article 3
2. A relative who is related to me through his/her biological mother.

**E.** I direct and devise that any fetus conceived before my death, whose relationship to me qualifies it to be an heir according to this Article shall be considered an heir if the following condition is fulfilled: that the fetus should be born alive within 44 weeks of my death, unless approved by medical authority. I further direct and devise that, whenever there exists a fetus who may become an heir according to this section, the whole distribution of the residue and remainder of my estate after the execution of Articles 2 and 3, shall be delayed until after the birth of the fetus.

## **ARTICLE 5: EXECUTOR AND GUARDIAN**

I hereby nominate and appoint \_\_\_\_\_ residing at

\_\_\_\_\_ to be the executor of this, my Last Will and Testament. In the event that the above named person shall be unwilling or unable to act as executor, I nominate and appoint \_\_\_\_\_ residing at

\_\_\_\_\_ to be executor of this, my Last Will and Testament. In the event that this person shall be unwilling or unable to act as executor, I nominate and appoint the Islamic Association in my area to have the right to nominate and appoint a qualified person to be the executor of this, my Last Will and Testament

I give my executor herein named power to settle any claim for or against my estate and power to sell any property, real, personal, or mixed, in which I have an interest, without court order and without bond. I direct that no bond or surety for any bond be required for my executor in the performance of his/her duties.

I hereby nominate and \_\_\_\_\_ residing at

\_\_\_\_\_ to be the guardian of the persons and estates of such of my children as shall be minor at and after my death, during their minority, so long as said guardian remains as upright and practicing Muslim of sound mind and judgment. In the event that the above named person is unwilling or unable to act as guardian, I nominate and appoint

\_\_\_\_\_ residing at

\_\_\_\_\_ to be guardian. In the event that this person shall be unwilling or unable to act as guardian, I nominate and appoint I nominate and appoint the Islamic center in the area I die at, to nominate and appoint a qualified person to be the guardian.

**ARTICLE 6: SEPARABILITY**

I direct and ordain that if any part of this last will and Testament is determined invalid by a court or competent jurisdiction, the other parts shall remain valid and enforceable.

I, \_\_\_\_\_, the testator, sign my name to this instrument on \_\_\_\_\_, and being first dully sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), 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.

\_\_\_\_\_ Testator

We, \_\_\_\_\_

\_\_\_\_\_, the witnesses, sign our names to this instrument, being first dully sworn, and do hereby declare to the undersigned authority that the testator sings and executes this instrument as his or her last will and that he or she signs it willingly (or willingly directs another to sign for him or her), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator’s signing, and to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_ Witness

\_\_\_\_\_ Witness

The State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_, the testator, and subscribed and sworn to before me by \_\_\_\_\_ & \_\_\_\_\_, witnesses,

This \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

(Official Seal)

Notary Public

My commission expires \_\_\_\_\_, 2000.

## SCHEDULE A: THE ISLAMIC DISTRIBUTION OF THE ESTATE

I ordain and direct that this Schedule be used as the only reference for distribution of the residue and remainder of my estate referred to in Article 4. This Schedule must be defined as part of my Last Will and Testament.

### CASE #1: ONE SON OR MORE (INCLUDING ANY NUMBER OF DAUGHTERS) SURVIVING HEIRS SHARE OF REMAINDER OF ESTATE

SURVIVING HEIR	SHARE OF REMAINDER OF ESTATES
1.a with no other	he/they get all remainder such that sons are equal in their class, daughters are equal in their class, and for each daughter half as for each son
1.b with wife	1/8 to wife, rest as in 1.a
1.c with husband	1/4 to husband, rest as in 1.a
1.d with father and mother	1/6 to each of father and mother, rest as in 1.a
1.e with one parent	1/6 to parent, rest as in 1.a
1.f with any possible combination of 1.b, 1.c, 1.d, and 1.e	each spouse and parent takes the share mentioned above and the rest as in 1.a
1.g with father of father (while father deceased) and mother of father (and no father or mother)	1/6 to each of father of father and mother of father, rest as in 1.a
1.h same as 1.g, with wife	1/6 to mother of father; 1/6 to father of father; 1/8 to wife; and rest as in 1.a
1.i same as 1.g, with husband	1/6 to mother of father; 1/6 to father of father; 1/4 to husband and rest as in 1.a
1.j with father of father, (no father), and mother	1/6 to each of mother and father of father, rest as in 1.a
1.k same as 1.j, and wife	1/6 to each of mother and father of father, 1/8 to wife, and rest as in 1.a

SURVIVING HEIR	SHARE OF REMAINDER OF ESTATES
1.l same as 1.j, with husband	1/6 to each of mother and father of father, 1/4 to husband, and rest as in 1.a 1
1.m with father and mother of mother (no mother)	1/6 to mother of mother; 1/6 to father, and rest as in 1.a
1.n same as 1.m, with wife	1/6 to each of father and mother of mother, 1/8 to wife, and rest as in 1.a
1.o same as 1.m, with husband	1/6 to each of father and mother of mother, 1/4 to husband, rest as in 1.a
1.p same as 1.m, but more than one same degree grandmother (i.e. mother of mother and mother of father) in 1.g, 1.h, and 1.i	1/6 to grandmothers shared equally, rest as in 1.a

**\*\*\*DISREGARD ANY OTHER RELATIVES IN CASE #1\*\*\***

**CASE #2: ONE DAUGHTER OR DAUGHTERS; NO SONS**

<b>SURVIVING HEIR</b>	<b>SHARE OF REMAINDER OF ESTATES</b>
2.a with no other relatives	if only one, she takes all remainder; if more than one, they share equally
2.b with wife	1/8 to wife, rest as in 2.a
2.c with husband	1/4 to husband; rest as in 2.a
2.d with father	1/2 to the one daughter, 1/2 to father. If more than one daughter, 2/3 to daughters equally and 1/3 to father
2.e with mother	1/4 to mother, 3/4 to daughter. If more than one daughter, 4/5 to daughters equally, and 1/5 to mother
2.f with parents	1/6 to mother, 1/3 to father, 1/2 to daughter. If more than one daughter, 2/3 to daughters equally, 1/6 to mother, and 1/6 to father
2.g with wife and father	1/8 to wife, 1/2 to daughter and 9/24 to father. if more than one daughter, 2/3 to daughters equally, 1/8 to wife, and 5/24 to father.
2.h with wife and mother	1/8 to wife, 7/32 to mother, 21/32 to daughter. If more than one daughter, 7/10 to daughters equally, 1/8 to wife, 7/40 to mother.
2.i with wife and parents	1/8 to wife, 1/6 to mother, 5/24 to father, and 1/2 to daughter. If more than one daughter, 16/27 to daughters equally, 3/27 to wife, 4/27 to mother, and 4/27 to father.
2.j with husband and father	1/4 to husband, 1/4 to father and 1/2 to daughter. If more than one daughter, 8/13 to daughters equally, 3/13 to husband, and 2/13 to father.
2.k with husband and mother	1/4 to husband, 7/36 to mother, 5/9 to daughter. If more than one daughter, 8/13 to daughters equally, 3/13 to husband and 2/13 to mother.
2.l with husband and parents	3/13 to husband, 2/13 to mother, 2/13 to father, and 6/13 to daughter. If more than one daughter, 8/15 to daughters equally, 3/15 to husband, 2/15 to mother, 2/15 to father.
2.m with father of father	1/2 to father of father, 1/2 to daughter. If more than one daughter, 2/3 to daughters equally, 1/3 to father of father
2.n same as 2.m with wife	same as in 2.g, but father of father in place of father
2.o same as 2.m with husband	same as in 2.j, but father of father in place of father
2.p same as 2.m with mother or mother of father or without mother but with mother of mother	same as in 2.f, but father of father in place of father, and grandmother in place of mother
2.q same as 2.p with wife	same as in 2.i, but father of father in place of father, and grandmother in place of mother
2.r same as 2.p and husband	same as in 2.l, but father of father in place of father, and grandmother in place of mother
2.s same as 2.p, 2.q, 2.r but with both grandmothers and no mother	grandmothers share equally assigned to the mother or to one grandmother in cases 2.p, 2.q, 2.r respectively; the rest as in 2.p, 2.q, and 2.r respectively
2.t with son of son	1/2 to daughter, 1/2 to son of son. if more than one daughter, 2/3 to daughters equally, and 1/3 to son of son.
2.u with more than one son of son,(including any number of daughters of son(s))	same as in 2.t and the share of son of son is divided among sons of son and daughters of sons based on rules stated in 1.a
2.v same as 2.u with wife or husband	1/2 to daughter, 1/4 to husband (or 1/8 to wife), rest to children of sons as in 2.u. if more than one daughter, 2/3 to daughters equally, 1/4 to husband (or 1/8 to wife), rest to children of sons as in 2.u
2.w same as 2.v with 2 parents or with father of father (and no father	1/2 to daughter, 1/8 to wife, 1/6 to father of father, 1/6 to mother/grandmother(s), and 1/24 to children of sons as in 2.u 6/13 to

and no brothers)and mother or with father of father (no father and no brothers) and a grandmother(s) of either side (with no mother)	daughter, 3/13 to husband, 2/13 to father of father, 2/13 to mother/grandmother(s), and nothing to children of son. If more than one daughter, 16/27 to daughters equally, 3/27 to wife and rest equally to parents, grandfather and mother, grandfather and grandmother, or grandfather on one hand and grandmother on the other hand, nothing to children of son 8/15 to daughters, 3/15 to husband, and the rest as in preceding paragraph and nothing to children of son
2.x with daughter(s) of son	3/4 to one daughter, 1/4 to daughters of son equally. If more than one daughter, then all to them and none to daughter(s) of son
2.y with sister(s) of same 2 parents (no brothers) or with brother(s) of same 2 parents (no sisters)	1/2 to one daughter, 1/2 to sister or brother, or equally among sisters or brothers If more than one daughter, 2/3 to daughters equally, 1/3 to sisters or brothers, or equally among sisters or brothers.
2.z with sisters(s) and brother(s) of same 2 parents	1/2 to one daughter, 1/2 to sister(s) and brother(s) on the basis of one share to female and two shares to male. If more than one daughter, 2/3 to them equally, 1/3 to sister(s) and brother(s) on the same basis
2.aa same as 2.y with wife or husband; or 2.z with wife/husband	1/2 to daughter, 1/8 to wife and 3/8 to sister(s) and/or brother(s) as in 2.y and 2.z; 1/2 to daughter, 1/4 to husband, 1/4 to sister(s) and/or brother(s) as in 2.y or 2.z; if more than one daughter, 2/3 to daughters equally, 1/4 to husband (or 1/8 to wife), the rest to sister(s) and/or brother(s) as in 2.y or 2.z
2.ab with uncle(s) from same parents as father	1/2 to daughter and the rest to uncle(s) equally. If more than one daughter, 2/3 to them equally, and rest to uncle(s) equally.

**\*\*\*IF THE TESTATOR'S CASE IS UNDER this CASE, BUT NOT COVERED ABOVE, THE EXECUTOR SHOULD CONSULT A PROMINENT ISLAMIC SCHOLAR FOR GUIDANCE IN THE DISTRIBUTION.**

### **CASE #3: CHILDREN OF SON(S) AND NO SONS OR DAUGHTERS**

Apply Case #1 and Case #2 after substituting "daughter of son" for daughter and "son of son" for son.

### **CASE #4: PARENT(S) AND NO OFFSPRING**

<b>SURVIVING HEIR</b>	<b>SHARE OF REMAINDER OF ESTATES</b>
.a a father alone or father and his brother(s) and/or sister(s)	all remainder to father alone, nothing to brother(s) and sister(s)
4.b father and wife or husband	1/4 to wife (or 1/2 to husband) and rest to father
4.c father and mother (no brothers or sisters)	1/3 to mother, 2/3 to father
4.d same as 4.c with wife or husband	1/4 to wife, 1/4 to mother, 1/2 to father OR 1/2 to husband, 1/6 to mother, rest to father
4.e same as 4.c or 4.d with at least 2 brothers and/or sisters or one brother and one sister	1/6 to mother, nothing to brother(s) and sister(s), rest to father 1/6 to mother, nothing to brother(s)/sister(s) , 1/4 to wife (or 1/2 to husband), rest to father



4.f mother only	all remainder
4.g mother and wife or husband	1/4 to wife or 1/2 to husband, rest to mother
4.h mother with 1 brother/sister of same 2 parents or father's side	1/3 to mother, rest to brother; 2/5 to mother, rest to sister
4.i same as 4.h with husband or wife	1/3 to mother, 1/2 to husband or 1/4 to wife, rest to brother 4/13 to mother, 3/13 to wife, 6/13 to sister; or 2/8 to mother, 3/8 to husband, 3/8 to sister.
4.j mother with at least 2 brothers, one brother and sister all of same 2 parents or father's side	1/6 to mother, rest to brothers or brother(s) and sister(s) according to rules in 1.a
4.k same as 4.j with husband or wife	1/6 to mother, 1/4 to wife (or 1/2 to husband), rest to brother or brother(s) and sister(s) as in rules 1.a
4.l mother with 2 or more sisters of same 2 parents or father's side	1/5 to mother, 4/5 to sisters equally among them
4.m same as 4.l with wife or husband	3/13 to wife, 2/13 to mother, 8/13 to sisters equally. 3/8 to husband, 1/8 to mother, 4/8 to sisters among them equally
4.n mother with one brother/sister of mother's side	2/3 to mother, 1/3 to brother or sister
4.o same as 4.n with wife or husband	1/4 to wife, 1/2 to mother, 1/4 to brother or sister 1/2 to husband, 1/3 to mother, 1/6 to brother or sister
4.p mother with more than 1 brother and/or sister of mother's side	1/3 to mother, 2/3 to brother(s) and sister(s) equally among them
4.q same as 4.p with wife or husband	1/4 to wife, 1/4 to mother, 1/2 to brother(s) and sister(s) equally among them 1/2 to husband, 1/4 to mother, 1/4 to brother(s) and sister(s) equally among them
4.r with mother and father of father (no brothers or sisters)	1/3 to mother, rest to father of father
4.s same as 4.r with wife or husband	1/3 to mother, 1/4 to wife (or 1/2 to husband), rest to grandfather
4.t with mother and son of brother who is of same 2 parents	1/3 to mother, rest to son of brother
4.u same as 4.t with wife or husband	1/3 to mother, 1/4 to wife (or 1/2 to husband) and rest to son of brother
4.v with mother and brother of father of same 2 parents	1/3 to mother, rest to brother
4.w same as 4.v with wife or husband	same as 4.u above, but brother of father instead of son of brother
4.x with father and mother of mother (no mother)	1/6 to mother of mother, rest to father
4.y with mother, brother(s) and father of father	1/6 to mother, rest among brother(s) and father of father equally, unless grandfather's share goes below 1/3, in which case grandfather gets 1/3 and rest to brothers equally.

**\*\*\*IF THE TESTATOR'S CASE IS UNDER this CASE, BUT NOT COVERED ABOVE, THE EXECUTOR SHOULD CONSULT A PROMINENT ISLAMIC SCHOLAR FOR GUIDANCE IN THE DISTRIBUTION.**

**CASE #5: HUSBAND OR WIFE, NO OFFSPRING, AND NO FATHER OF FATHER**

SURVIVING HEIR	SHARE OF REMAINDER OF ESTATES
5.a husband	1/2 to husband, rest to an Islamic Charity. (1)
5.b wife	1/4 to wife, 3/4 to an Islamic Charity. (1)
5.c husband/wife with one brother or brothers and sisters	1/2 to husband (or 1/4 to wife) rest to the one brother or equally to brothers or to brothers and sisters on the basis of one share to each female and two shares to each male
5.d husband/wife with sister(s)	1/2 to husband (or 1/4 to wife), rest to the one sister or equally among sisters
5.e husband/wife with son(s) of brother(s) or son(s) and daughters of brother(s)	same as in 5.c, but niece and nephew in place of sister and brother
5.f husband/wife with brother(s) of father	1/2 to husband (or 1/4 to wife) rest to uncle(s) equally

**\*\*\*IF THE TESTATOR'S CASE IS UNDER this CASE, BUT NOT COVERED ABOVE, THE EXECUTOR SHOULD CONSULT A PROMINENT ISLAMIC SCHOLAR FOR GUIDANCE IN THE DISTRIBUTION.**

**CASE #6: ALL OTHER CASES, NOT COVERED ABOVE, THE EXECUTOR SHOULD CONSULT A PROMINENT ISLAMIC SCHOLAR FOR GUIDANCE IN THE DISTRIBUTION.**

(1) In Shari'ah point of view, this money should go to Bayt Almmal (house of Muslim money), but in the absence of Bayt Almmal, your local Islamic Association may be the beneficiary. Every Muslim writing a will is encouraged to make a special contribution to the Islamic Association in his area since it is devoted to Islamic activities in the community.