

WILL EVALUATION CHECKLIST

	Yes	No	Provision
PART 1. BASIC PROVISIONS			
1.			<u>Intent</u> : Is the document clearly intended as a will?
2.			<u>Age</u> : Was the testator at least 18 when the will was made?
3.			<u>Capacity</u> : Was the will made under circumstances that would call into question the testator's capacity or that would raise a presumption of undue influence? <i>(NOTE: A recitation of capacity is virtually meaningless. If there is a likelihood of a challenge, consider accumulating additional evidence, such as physicians' affidavits, video taped interviews, etc.)</i>
4.			<u>Revocation</u> : Does the will explicitly revoke all prior wills and codicils?
5.			<u>Formalities</u> : <input type="checkbox"/> Is the will signed by the testator or by someone in his presence and at his direction? <input type="checkbox"/> Are there two competent witnesses? [NRS 133.040] <input type="checkbox"/> If not valid as an attested will under Nevada law, is it valid as a holograph or as an out-of-state will? (See 6. or 7., below.)
6.			<u>Holographic Will</u> : Is the will entirely written, dated, and signed by the testator? [NRS 133.090]
7.			<u>Out-of-State Will</u> : Was the will properly signed under the laws of the state where the will was signed or where the testator was domiciled when the will was signed? [NRS 133.080]
8.			<u>Identification</u> : Are the testator, his family, and his beneficiaries clearly identified? Are all names found on the decedent's assets mentioned?
9.			<u>Fiduciaries</u> : Does the will include the designation of the following (as appropriate): <input type="checkbox"/> executor; <input type="checkbox"/> guardian of the testator's person; <input type="checkbox"/> guardian of the testator's estate; <input type="checkbox"/> guardian of the person for the testator's spouse (if spouse cannot make his or her own appointment); <input type="checkbox"/> guardian of the estate for the testator's spouse (if spouse cannot make his or her own appointment); <input type="checkbox"/> guardian of the testator's estate; <input type="checkbox"/> guardian of the person for children; <input type="checkbox"/> guardian of the estate for children; and <input type="checkbox"/> trustee of each testamentary trust? <input type="checkbox"/> Are alternates designated? <input type="checkbox"/> If cofiduciaries are appointed, are decisions made by majority vote? If there is an even number, is there a tie-breaking provision? <input type="checkbox"/> Is bond explicitly waived or required?



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10.			<p><u>Distribution</u>: Is the dispositive scheme clear and unambiguous? <input type="checkbox"/> Are the beneficiaries and their shares clearly defined? <input type="checkbox"/> Are there alternate beneficiaries if the primary beneficiaries fail to survive (or disclaim)? Are there alternate gifts if the gifted assets no longer exist? <input type="checkbox"/> Is there an adequate provision for the distribution of the residue? [See also Part 4 of this checklist regarding testamentary trusts and custodial transfers.]</p>
11.			<p><u>Simultaneous Death</u>: Is this issue addressed? [NRS Chapter 135]</p>
12.			<p><u>Abatement and Sales</u>: If assets may be inadequate to satisfy all gifts, does the will outline the manner and priority for the abatement of gifts and the sale of assets to satisfy them?</p>
PART 2. OPTIONAL PROVISIONS			
13.			<p><u>Specific Gifts</u>: Is there a provision allowing for the distribution of specific items of tangible personal property pursuant to a separate written list [under NRS 133.045]?</p>
14.			<p><u>Omission of Future Spouse</u>: Does will specifically exclude distributions to a future spouse unless specifically provided for in a subsequent codicil?</p>
15.			<p><u>Fiduciaries' Powers</u>: <input type="checkbox"/> Does the will permit the executor and/or guardian to sell assets without prior court authorization and without notice at a private sale? <input type="checkbox"/> Does the will incorporate by reference the powers of NRS 163.265 through 163.410? If not, are the included powers adequate? <input type="checkbox"/> Are the provisions adequate relating to tax elections for income, gift, and estate tax purposes?</p>
16.			<p><u>Self-Proving Affidavit</u>: (Optional) Did the attesting witnesses sign a self-proving affidavit or declaration?</p>
17.			<p><u>Coordination with Nonprobate Assets</u>: Is the dispositive scheme coordinated with the distribution of assets not subject to administration (including life insurance, joint tenancy property, and other assets that pass by operation of law or contract)?</p>
18.			<p><u>Terminology</u>: Does the will use proper terms? Is there a proper distinction between heirs and beneficiaries? Legatees and devisees? Is distribution to issue to be made per stirpes (by right of representation) or per capita? Is the executor "authorized" to do something when he should be "directed" or "required" to do it? Are shares "allocated" to a beneficiary, but not "distributed" to him?</p>
19.			<p><u>Contests</u>: Does the testator want to include a clause stating that anyone who contests the will gets nothing?</p>
20.			<p><u>Accounting</u>: Does the will instruct the Executor how to allocate income and principal? Do you want to rely on the Uniform Principal and Income Act [NRS 164.140 et seq.]?</p>
PART 3. POTENTIAL PROBLEMS			



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21.			<u>Conflict with Court Order or Binding Agreement</u> : Is the dispositive scheme in conflict with a covenant not to revoke a prior will, with a divorce or child support decree or other court order, with a prenuptial or other agreement relating to community and/or separate property?
22.			<u>Witnesses</u> : Is any witness also a beneficiary under the will? If so, are there two other competent witnesses?
23.			<u>Disinheritance</u> : Is any natural heir omitted? Is the testator's intent clearly stated?
24.			<u>Minimal Gifts</u> : Is there a gift for \$1 or other nominal amount to a person who should be left nothing?
25.			<u>Conditional Gifts</u> : Is there a conditional gift? Is the condition difficult to ascertain? Is it contrary to public policy? Is there an alternate distribution?
26.			<u>Defamation</u> : Does the testator defame anyone?
27.			<u>Loans; Advancements</u> : Is any beneficiary's share to be reduced by any loan or advancement? Is the intent clear? Is there a promissory note?
28.			<u>Directive to Pay Funeral Bills</u> : Does the will require the payment of funeral expenses without requiring prior executor approval of such expenses? This provision is best left out entirely.
29.			<u>Directive to Pay Debts</u> : Is there a directive to pay debts that can be construed to require payment from the estate of debts that might otherwise be paid from insurance or other resources or that may resurrect debts otherwise barred under a statute of limitations? This provision is best left out entirely.
30.			<u>Other Provisions</u> : Does the will include provisions not related to the distribution or administration of assets, such as funeral and burial instructions? anatomical gifts? declaration regarding artificial life support ("living will")? Should more appropriate documents be created, such as a [] living will; [] health care power of attorney; [] durable general or special power of attorney; [] organ donor card.
<p>PART 4. TESTAMENTARY TRUSTS; CUSTODIAL TRANSFERS; LIFE ESTATES</p> <p>If the will provides for delayed or periodic distributions—such as to minors, spendthrifts, or to family members for generation-skipping purposes—the will should create a testamentary trust or provide for a distribution to a custodian under Nevada's Uniform Act on Transfers to Minors [NRS Chapter 167]. Life estates are legal but trusts can accomplish the same thing with fewer problems.</p>			
31.			<u>Trustee</u> : Is a Trustee designated? Alternates? Are the Trustee's powers adequately outlined? (See item 15. regarding statutory powers.)
32.			<u>Technical Provisions for Trust Administration</u> : Does the will contain adequate provisions to create and govern a testamentary trust?
33.			<u>Clear Dispositive Provisions</u> : Are the terms and conditions of the distributions and the termination of the trust clearly stated?



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34.			<u>Rule against Perpetuities</u> : Must each interest vest within the perpetuities period? (21 years after the death of the survivor of those persons alive at the time of the testator's death.)
35.			<u>Spendthrift Trust</u> : Does each testamentary trust qualify as a Spendthrift Trust as permitted under NRS Chapter 166? Does the trust provide for a mandatory or discretionary distributions in order to preclude voluntary termination?
36.			<u>Custodial Gift</u> : Is it more appropriate to make a gift to a custodian under the Transfers to Minors Act? If so, is it desirable to specify an age other than 18 as the age of entitlement?
37.			<u>Life Estate</u> : Does the will give anyone a life estate in property? If so, is there adequate provision for the maintenance and repair of the property and the payment of associated taxes, assessments, debt service, and other related expenses?

This version is based on Nevada law and applies to wills other than "pour-over" wills that transfer the probate estate into a revocable living trust.
This version does not include any estate, gift, or generation-skipping transfer tax planning.



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