

Memorandum 82-10

Subject: Study L-603 - Probate Law (Self-Proved Will)

Under the UPC, a will may be executed not only in the ordinary way by being signed by the testator or by someone else signing for the testator and in the testator's presence and being witnessed (UPC § 2-502), but also by a more formal procedure where the will is witnessed before a notary public or other officer authorized to administer oaths (UPC § 2-504, attached to this memorandum as Exhibit 1). If the more formal procedure is used, the will becomes "self-proved": Compliance with signature requirements for execution is conclusively presumed, and the will may be admitted to formal or informal probate without the testimony of any subscribing witness. UPC § 2-406; Official Comment to UPC § 2-504. The main benefit of this provision is in the case of contested formal probate proceedings where due execution of a will which is not self-proved must be proved by the testimony of at least one subscribing witness or by other evidence. UPC § 3-406. (Proof of execution is not required in informal probate, whether or not the will is self-proved. UPC § 3-303; Official Comment to UPC § 2-504.)

The only provision in California law which is remotely similar to the UPC's self-proved will is a very limited provision which permits the testimony of a subscribing witness to be presented by affidavit in uncontested cases. Prob. Code §§ 329, 1233; French & Fletcher, A Comparison of the Uniform Probate Code and California Law With Respect to the Law of Wills, in Comparative Probate Law Studies 336 n.21 (1976).

The UPC provision for a self-proved will would be a significant improvement in California law. The self-proved will provisions have proved popular even in states which have declined to adopt the UPC as a whole. Niles, Probate Reform in California, 31 Hastings L.J. 185, 211 (1979). The State Bar found the self-proved will provisions to be good "in the absence of objections to probate." State Bar of California, The Uniform Probate Code: Analysis and Critique 45 (1973). However, it would appear that the significant value of the self-proved will is that it forecloses attack in contested cases on compliance with signature requirements for execution. It would not, however, preclude proof of

undue influence, lack of testamentary capacity, revocation, or that the testator was unaware of the contents of the document. Official Comment to UPC § 3-406.

Accordingly, the staff recommends the adoption of UPC Section 2-504 (self-proved will).

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

EXHIBIT 1

UNIFORM PROBATE CODE § 2-504

Section 2-504. [Self-proved Will.]

(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19____, and being first duly 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 duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), 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 that 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 _____, and _____, witnesses, this _____ day of _____.

(Seal) _____ (Signed) _____

(Official capacity of officer)

(b) An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

The State of _____
County of _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly (or willingly directed another to sign for him), and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

 Testator

 Witness

 Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(Seal) (Signed) _____

 (Official capacity of officer)

COMMENT

A self-proved will may be admitted to probate as provided in Sections 3-303, 3-405 and 3-406 without the testimony of any subscribing witness, but otherwise it is treated no differently than a will not self-proved. Thus, a self-proved will may be contested (except in regard to signature requirements), revoked, or amended by a codicil in exactly the same fashion as a will not self-proved. The significance of the procedural advantage for a self-proved will is limited to formal testacy proceedings because Section 3-303 dealing with informal affidavits of the witnesses, thereby requiring testator and witnesses to sign twice even though the entire execution ceremony occurred in the presence of a

probate dispenses with the necessity of testimony of witnesses even though the instrument is not self-proved under this section. The original text of this section directed that the officer who assisted the execution of a self-proved will be authorized to act by virtue of the laws of "this State", thereby restricting this mode of execution to wills offered for probate in the state where they were executed. Also, the original text authorized only the addition to an already signed and witnessed will, of an acknowledgment of the testator and notary or other official. In 1975, the Joint Editorial Board recommended the substitution of new text that eliminates these problems.