

#L-610

2/11/82

Memorandum 82-24

Subject: Study L-610 - Probate Law (International Wills)

Probate Code Sections 60-60.8 set forth the Uniform International Wills Act with only a few editorial changes. (See 1979 Cal. Stats. ch. 632.) The Uniform International Wills Act is also incorporated as part of the Uniform Probate Code. (See UPC §§ 2-1001 to 2-1010.) The Uniform International Wills Act was promulgated to implement an international convention intended to set standards for recognition of foreign wills.

A staff draft of the Uniform International Wills Act renumbered as Sections 295.010-295.100 is attached to this memorandum as Exhibit 1. We have made a few editorial changes, some of them to conform California law to the language of the uniform act where there did not appear to be any reason for the variation in existing law. There are no policy issues regarding this uniform act.

Respectfully submitted,

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Staff Counsel

EXHIBIT 1

STAFF DRAFT

UNIFORM INTERNATIONAL WILLS ACT  
(Proposed Probate Code §§ 295.010-295.100)

Probate Code §§ 60-60.8 (repealed). Uniform International Wills Act

Comment. Former Sections 60-60.8 are continued in [Chapter 10] (commencing with Section 295.010) without substantive change. For a table showing the disposition of former law, see the Comment to [Chapter 10] (commencing with Section 295.010).

Probate Code §§ 295.010-295.100 (added). Uniform International Wills Act

SEC. . [Chapter 10] (commencing with Section 295.010) is added to Division 1 of the Probate Code, to read:

[CHAPTER 10.] UNIFORM INTERNATIONAL WILLS ACT

Comment. [Chapter 10] (commencing with Section 295.010) continues the Uniform International Wills Act, formerly set forth in Chapter 2.5 (commencing with Section 60) of Division 1, without substantive change. The following table shows the corresponding sections of this [chapter], and the Uniform International Wills Act as set forth in the Uniform Probate Code, and former law.

<u>New Probate Code Sections 295.010- 295.100</u>	<u>Uniform Probate Code Sections 2-1001 to 2-1010</u>	<u>Former Probate Code Sections 60-60.8</u>
295.010	2-1001	60
295.020	2-1002	60.1
295.030	2-1003	60.2
295.040	2-1004	60.3
295.050	2-1005	60.4
295.060	2-1006	60.5
295.070	2-1007	60.6
295.080	2-1008	60.7
295.090	2-1009	60.8, para. 1
295.100	2-1010	60.8, para. 2

For additional discussion, see the Comments following the sections in the Uniform Probate Code.

§ 295.010. Definitions

295.010. In this [chapter]:

(a) "International will" means a will executed in conformity with Sections 295.020 to 295.050, inclusive.

(b) "Authorized person" and "person authorized to act in connection with international wills" means a person who by Section 295.090, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

§ 295.020. Validity of international will

295.020. (a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this [chapter].

(b) The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

(c) This [chapter] does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

§ 295.030. Requirements of international will

295.030. (a) The will shall be made in writing. It need not be written by the testator himself or herself. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his or her will and that he or she knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if he or she has previously signed it, shall acknowledge his or her signature.

(d) If the testator is unable to sign, the absence of his or her signature does not affect the validity of the international will if the testator indicates the reason for his or her inability to sign and the authorized person makes note thereof on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to

sign the testator's name for him or her if the authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for him or her.

(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

§ 295.040. Additional requirements of international will

295.040. (a) The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet shall be signed by the testator or, if he or she is unable to sign, by the person signing on his or her behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

(b) The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether he or she wishes to make a declaration concerning the safekeeping of his or her will. If so and at the express request of the testator, the place where he or she intends to have his or her will kept shall be mentioned in the certificate provided for in Section 295.050.

(d) A will executed in compliance with Section 295.030 is not invalid merely because it does not comply with this section.

§ 295.050. Certificate of authorized person

295.050. The authorized person shall attach to the will a certificate to be signed by him or her establishing that the requirements of this [chapter] for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:

CERTIFICATE  
(Convention of October 26, 1973)

1. I, \_\_\_\_\_ (name, address and capacity), a person authorized to act in connection with international wills,
2. certify that on \_\_\_\_\_ (date) at \_\_\_\_\_ (place)
3. testator \_\_\_\_\_  
(name, address, date and place of birth) in my presence and that of the witnesses
4. (a) \_\_\_\_\_ (name, address, date and place of birth)  
(b) \_\_\_\_\_ (name, address, date and place of birth) has declared that the attached document is his or her will and that he or she knows the contents thereof.
5. I furthermore certify that:
6. (a) in my presence and in that of the witnesses
  - (1) the testator has signed the will or has acknowledged his or her signature previously affixed.
  - \* (2) following a declaration of the testator stating that he or she was unable to sign his or her will for the following reason \_\_\_\_\_,  
I have mentioned this declaration on the will  
\*and the signature has been affixed by \_\_\_\_\_  
\_\_\_\_\_ (name and address)
7. (b) the witnesses and I have signed the will;
8. \*(c) each page of the will has been signed by \_\_\_\_\_ and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
11. \*(f) the testator has requested me to include the following statement concerning the safekeeping of his or her will:  

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12. \_\_\_\_\_ PLACE OF EXECUTION
13. \_\_\_\_\_ DATE
14. \_\_\_\_\_ SIGNATURE and, if necessary, SEAL

\*to be completed if appropriate

§ 295.060. Effect of certificate

295.060. In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this [chapter]. The absence or irregularity of a certificate does not affect the formal validity of a will under this [chapter].

§ 295.070. Revocation

295.070. The international will is subject to the ordinary rules of revocation of wills.

§ 295.080. Source and construction

295.080. Sections 295.010 to 295.070, inclusive, derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this [chapter], regard shall be had to its international origin and to the need for uniformity in its interpretation.

§ 295.090. Authorized persons

295.090. Individuals who have been admitted to practice law before the courts of this state and who are in good standing as active law practitioners of this state are authorized persons in relation to international wills.

§ 295.100. Registry system

295.100. The Secretary of State shall establish a registry system by which authorized persons may register in a central information center information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or other individual-identifying number established by law, if any, address, date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The Secretary of State, at the request of the authorized person, may cause the information it receives about execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator,

if that other system adheres to rules protecting the confidentiality of the information similar to those established in this state.