

## Memorandum 83-100

Subject: Study L-650 - Probate Law and Procedure (Execution of Witnessed Will)

At the last meeting, the Commission decided to substitute a requirement that the witnesses to a will sign within 24 hours of each other for the existing requirement that the witnesses be "present at the same time" to watch the testator sign or hear the testator acknowledge the will. The attached Recommendation Relating to Execution of Witnessed Wills incorporates this decision.

The staff is having second thoughts about the 24-hour rule, since it may have been based on a misapprehension of two aspects of existing law:

(1) The Commission adopted the 24-hour rule because it wanted to relax the "present at the same time" requirement without opening the door to the extreme case where the testator signs the will and has it signed by one witness, then perhaps months later acknowledges the will to a second witness. It was thought that the witnesses' testimony as to the testator's mental capacity and freedom from duress should relate to the same time--the time when the will was "executed." It was argued to the Commission that the will is not "executed" until both witnesses sign. Hence they should both sign at roughly the same time.

Staff research suggests that the assumption that the time for determining the testator's capacity is when both witnesses sign is incorrect. Although the staff has found no case squarely on point, there is language in the cases and secondary materials suggesting that the relevant time is when the testator signs, not when the witnesses do so. See In re Estate of Ivey, 94 Cal. App. 576, 585, 271 P. 559 (1928) ("precise moment when the testator signed"); Annot., 175 A.L.R. 882, 966 (1948) (time when will was "finally composed"); Annot., 168 A.L.R. 969, 973 (1947) (time when testator "executed or acknowledged" the will). See generally 7 B. Witkin, Summary of California Law Wills and Probate § 98, at 5615 (8th ed. 1974); Annot., 124 A.L.R. 433 (1940). If this is correct, then it serves no useful purpose to require the witnesses to sign within 24 hours of each other but without regard to the time elapsed from the testator's signing.

(2) In recommending the 24-hour rule, the Commission thought it was liberalizing California law somewhat, but with reasonable limits. By repealing the "present at the same time" requirement, the Commission's recommendation would indeed validate some wills that would be invalid under existing law. However, the 24-hour rule would invalidate some wills that would be valid under existing law, since the "present at the same time" requirement has no effect on when the witnesses must sign: The witnesses need not sign in the testator's presence (Comment to Section 6110) or in the presence of each other (In re Estate of Armstrong, 8 Cal.2d 204, 209-10, 64 P.2d 1093 (1937)). As long as the witnesses are present at the same time for the testator's signing or acknowledgment, they may actually sign the will long afterward. Hence, in this respect the 24-hour rule is more restrictive than existing law.

#### Staff Recommendation

Since the 24-hour rule appears to serve no useful purpose, it should be abandoned. The staff, Professor Niles, and Professor Dukeminier continue to think that the "present at the same time" rule should be repealed, which would bring California into line with the Uniform Probate Code and many other states. However, in view of the opposition of the State Bar to this proposal, a middle ground solution may be more acceptable:

(1) If the "present at the same time" requirement were modified to read "present at substantially the same time," the Bar's concern would be addressed while avoiding the bad case where a will is invalidated because a witness was in the next room when the testator signed.

(2) Instead of providing that the witnesses' failure to comply with the statute results in the will being invalid even when there is no question of the testator's capacity and no hint of fraud, the statute could be revised to provide that the witnesses' noncompliance shifts the burden of proof to the proponent of the will to show that the testator had capacity and that there was no fraud, duress, or undue influence.

Either or both of the foregoing would give the court a "safety valve" to avoid harsh results in close cases.

Respectfully submitted,

Robert J. Murphy III  
Staff Counsel

## RECOMMENDATION

relating to

## EXECUTION OF WITNESSED WILLS

Introduction

This recommendation proposes two changes in the requirements for execution of a witnessed will. First, it substitutes the requirement that the witnesses sign the will within 24 hours of each other for the existing requirement that the witnesses be "present at the same time" to observe the testator sign the will or to hear the testator acknowledge his or her signature on the will. Second, it permits a will to be acknowledged before a notary public as an alternative to being witnessed by at least two persons. These proposals are discussed below.

Witnesses Present at the Same Time

California law permits a person making a will either to sign the will in the presence of two or more witnesses, or to sign the will out of the presence of witnesses and then to acknowledge the signature to the witnesses.<sup>1</sup> In either case, the witnesses must be present at the same time to observe the testator sign or to hear the testator's acknowledgment.<sup>2</sup> This requirement precludes the testator from signing the will in the presence of one witness and later acknowledging the signature to another witness. It also precludes the testator from signing the will out of the presence of witnesses, acknowledging the signature to one witness, and later acknowledging the signature to a second witness.

The witnessing ceremony is to ensure that the testator intended the instrument to be a will, to minimize the opportunity for fraudulent alteration of the will or substitution of another instrument for it, and to provide persons who can testify after the testator's death that the testator appeared to be of sound mind and free from duress when the will was executed.<sup>3</sup> The requirement that the witnesses be present at the

1. Prob. Code § 6110. Unless otherwise indicated, all references to the Probate Code are references to provisions enacted by 1983 Cal. Stats. ch. 842, operative January 1, 1985.

2. Id.

3. See In re Estate of Emart, 175 Cal. 238, 239, 165 P. 707 (1917); Mechem, Why Not A Modern Wills Act?, 33 Iowa L. Rev. 501, 504-05 (1948).

same time does nothing to ensure testamentary intent or to minimize fraud. Arguably, the requirement may provide some marginal benefit in having the testimony of each witness as to the testator's apparent mental capacity and freedom from duress relate to the same moment in time. However, this marginal benefit is outweighed by the injustice produced by invalidating an otherwise good will for an inadvertent technical defect in the execution process.<sup>4</sup>

Many illustrations can be found in the reported decisions of the unjust results produced by strict application of the simultaneous presence requirement.<sup>5</sup> Wills have been invalidated in the following cases where there was no doubt that the testator intended the instrument to be a will and there was no suspicion of fraud:

(1) The attorney prepared the will, the testator signed it, and the attorney signed as a witness. Then the attorney asked his law partner to act as the second witness. The law partner telephoned the testator, the testator verified that the instrument was his will, and the law partner signed the will as the second witness. The will was held invalid because the witnesses were not present at the same time.<sup>6</sup>

(2) The testator had dinner with friends. After dinner, he asked two of his friends to witness his will. One friend witnessed the will in the dining room while the other was in the lounge. Then the second guest came into the dining room and signed the will as a witness. The will was held invalid because the witnesses were not present at the same time.<sup>7</sup>

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4. It has been argued that if the requirement that the witnesses be present at the same time were eliminated, a testator might obtain one witness, delay finding a second, and die in the interim, with the result that the will would fail. Although this is a possibility, it seems far more remote than the likelihood that many wills will fail for noncompliance with the simultaneous presence requirement if that requirement is kept.

5. See, e.g., In re Estate of Jefferson, 349 So.2d 1032 (Miss. 1977); In re Heaney, 75 Misc.2d 732, 374 N.Y.S.2d 922 (Sur. Ct. 1973); In re Groffman, [1969] 1 W.L.R. 733; In re Colling, [1972] 1 W.L.R. 1440. See generally 7 B. Witkin, Summary of California Law Wills and Probate § 118, at 5633-34 (8th ed. 1974).

6. In re Estate of Jefferson, supra note 5.

7. In re Groffman, supra note 5.

(3) The testator was a hospital patient and asked the patient in the next bed and his nurse to witness his will. The testator started to sign the will in the presence of both witnesses, but the nurse was called away while the testator was signing. In the nurse's absence, the testator completed his signature, and the fellow patient signed as a witness. When the nurse returned, the testator and the fellow patient each acknowledged his signature to the nurse, and the nurse then signed as a witness. The will was held invalid because the witnesses were not present at the same time.<sup>8</sup>

The requirement that both witnesses be present at the same time is based on the assumption that everyone should be required to execute a will with the same strict formality followed by high-powered law firms drawing wills for wealthy clients.<sup>9</sup> This view is both unrealistic and undesirable. The governing philosophy should be to validate wills whenever possible when there is no hint of impropriety and no suspicion of fraud, and should take account of the habits and practices of ordinary people.<sup>10</sup>

Many states do not require that the witnesses be present at the same time.<sup>11</sup> The Uniform Probate Code does not have this requirement.<sup>12</sup> In those jurisdictions which do have the simultaneous presence requirement, no other technical requirement causes wills to fail so often as this one.<sup>13</sup>

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8. In re Colling, supra note 5. In invalidating the will, the court said, "I come to this conclusion with the greatest regret, and only because I feel compelled to do so despite its so patently defeating the intention of the testator and involving no advantage, as far as I can see, in the avoidance of any fraud." Id. at 1442-43.

9. Mechem, supra note 3, at 503.

10. See Mechem, supra note 3, at 503; General Comment to Part 5 of Article 2 of the Uniform Probate Code.

11. See 79 Am. Jur.2d Wills § 282, at 475-76 (1975). The English Administration of Justice Act 1982, part IV, eliminates the requirement that the witnesses be present at the same time.

12. See Uniform Probate Code § 2-502.

13. Letter from Professor Jesse Dukeminier to California Law Revision Commission (December 17, 1982).

The Commission recommends that the California requirement that the witnesses be present at the same time be replaced by a requirement that the witnesses sign the will within 24 hours of each other.<sup>14</sup> The requirement that the witnesses be present at the same time invalidates far too many meritorious wills and is not worth the marginal gain of having witnesses observe the testator's mental capacity and freedom from duress at the same moment. The requirement that the witnesses sign within 24 hours of each other will be sufficient to ensure the relevance of their testimony concerning the testator's mental capacity and freedom from duress. Moreover, testimony as to the testator's mental capacity and freedom from duress need not necessarily be presented by witnesses to the will. Such testimony may also be given by family members and friends of the decedent.

It is not expected that elimination of the simultaneous presence requirement will change the way lawyers conduct their execution ceremonies. Most lawyers will continue to conduct the ritual in the traditional way. However, elimination of the simultaneous presence requirement will avoid harsh results when the traditional ritual is not strictly followed.

#### Acknowledgment of Will Before Notary Public

The requirement that there be at least two witnesses to the will is in part to ensure that there will be someone available to testify after the testator's death when admission of the will to probate is sought.<sup>15</sup> If the person witnessing the will is a notary public,<sup>16</sup> there is usually a public record of the person's whereabouts,<sup>17</sup> making it more likely that the person will be available after the testator's death to testify in the probate proceeding. Moreover, a notary's certificate of acknowledg-

14. This recommendation does not extend to a California statutory will, since the witnesses must watch the testator sign a California statutory will. See Sections 6240, 6241. There is no provision for the testator to acknowledge to the witnesses that the signature on a California statutory will is the testator's.

15. See 79 Am. Jur.2d Wills §§ 259-260, at 459 (1975).

16. A notary public who witnesses a will has been treated as an ordinary witness, acceptable as one of the required two witnesses to the will. See *Szarat v. Schuerr*, 365 Ill. 323, 6 N.E.2d 625 (1937); 2 *Bowe & D. Parker, Page on the Law of Wills* § 19.129, at 247 (rev. ed. 1960).

17. See Gov't Code § 8201.5.

ment indicates the date of the acknowledgment,<sup>18</sup> and the notary's journal affords a permanent record of the date of each official act and the character of every instrument acknowledged or proved before the notary.<sup>19</sup> For these reasons, a notary public is in a uniquely advantageous position to serve as a witness to a will.

The Commission recommends that the requirement that a will be witnessed be satisfied by the will being acknowledged before a notary public at any place within this state.<sup>20</sup> This will provide a simple and reliable alternative to the two-witness requirement to prove that the person who signed the will is the testator and to prove the date the will was acknowledged. This recommendation is consistent with the requirements for execution of a durable power of attorney for health care which may be acknowledged before a notary public as an alternative to having two witnesses to the instrument.

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The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 6110, 6240, and 6241 of the Probate Code, relating to wills.

The people of the State of California do enact as follows:

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18. See Civil Code § 1189. A will executed in the traditional manner need not be dated. McCarroll & Smith, Formal and Technical Aspects of Wills, in California Will Drafting § 4.16, at 132 (Cal. Cont. Ed. Bar 1965). The Commission's recommendation prescribes a form for the notary's certificate which is drawn from Civil Code Section 1189, but also provides for a statement by the notary as to the testator's soundness of mind and freedom from duress, fraud, and undue influence.

19. Gov't Code § 8206.

20. This recommendation does extend to California statutory wills.

Probate Code § 6110 (amended). Execution of witnessed will

SECTION 1. Section 6110 of the Probate Code is amended to read:

6110. (a) Except as provided in this part, a will shall be in writing and satisfy the requirements of this section.

(b) The will shall be signed either (1) by the testator or (2) in the testator's name by some other person in the testator's presence and by the testator's discretion.

(c) The will shall be witnessed by ~~being~~ one of the following methods:

(1) Be signed by at least two persons who sign within 24 hours of each other and each of whom ~~(1)~~ being present at the same time, (i) witnessed either the signing of the will or the testator's acknowledgment of the signature or of the will and ~~(2)~~ (ii) understand that the instrument they sign is the testator's will.

(2) Be acknowledged before a notary public at any place within this state.

Comment. Section 6110 is amended to substitute for the former requirement that the witnesses be "present at the same time" the new requirement that at least two of the witnesses sign within 24 hours of each other. Under Section 6110, only two witnesses who sign within 24 hours of each other are needed to establish the validity of the will, even where there are three or more persons who sign as witnesses.

Section 6110 is also amended to add the alternative of having a will acknowledged before a notary public. The form of the notary's certificate of acknowledgment is prescribed by Section 6110.5. See also Gov't Code §§ 8200-8230. Under paragraph (2) of subdivision (c), the acknowledgment must be made before a notary, and not before one of the various other officers referred to in Civil Code Section 1181 (judge, district attorney, etc.).

Probate Code § 6110.5 (added). Form of notary's certificate

SEC. 2. Section 6110.5 is added to the Probate Code, to read:

6110.5. If a will is acknowledged before a notary public as provided in Section 6110, the certificate of acknowledgment shall be substantially in the following form:



State of California )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,  
before me, \_\_\_\_\_,

(here insert name of notary public)

personally appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to  
be the person whose name is subscribed to this instrument,  
and acknowledged that he or she executed it. I declare  
under penalty of perjury that the person whose name is  
subscribed to this instrument appears to be of sound mind  
and under no duress, fraud, or undue influence.

NOTARY SEAL

\_\_\_\_\_  
(Signature of Notary Public)

Comment. Section 6110.5 is new and is drawn from Section 1189 of  
the Civil Code. Section 6110.5 provides a form of notary's certificate  
for use in connection with wills acknowledged before a notary as provided  
in Section 6110. See also Sections 6240, 6241 (acknowledgment before  
notary of California statutory will).

Probate Code § 6240 (amended). California Statutory Will Form

SEC. 3. Section 6240 of the Probate Code is amended to read:

6240. The following is the California statutory will form:

**CALIFORNIA STATUTORY WILL**

**NOTICE TO THE PERSON WHO SIGNS THIS WILL:**

1. IT MAY BE IN YOUR BEST INTEREST TO  
CONSULT WITH A CALIFORNIA LAWYER  
BECAUSE THIS STATUTORY WILL HAS SERIOUS  
LEGAL EFFECTS ON YOUR FAMILY AND  
PROPERTY.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY  
WHICH PASSES ON YOUR DEATH TO ANY PERSON  
BY OPERATION OF LAW OR BY ANY CONTRACT.  
FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF  
JOINT TENANCY ASSETS OR YOUR SPOUSE'S  
SHARE OF COMMUNITY PROPERTY, AND IT WILL  
NOT NORMALLY APPLY TO PROCEEDS OF LIFE  
INSURANCE ON YOUR LIFE OR YOUR  
RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE  
DEATH TAXES OR ANY OTHER TAXES. YOU  
SHOULD DISCUSS THE TAX RESULTS OF YOUR  
DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE, OR ADD  
WORDS TO THE FACE OF THIS CALIFORNIA  
STATUTORY WILL. IF YOU DO, THE CHANGE OR  
THE DELETED OR ADDED WORDS WILL BE

DISREGARDED AND THIS WILL MAY BE GIVEN EFFECT AS IF THE CHANGE, DELETION, OR ADDITION HAD NOT BEEN MADE. YOU MAY REVOKE THIS CALIFORNIA STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

6. THE FULL TEXT OF THIS CALIFORNIA STATUTORY WILL, THE DEFINITIONS AND RULES OF CONSTRUCTION, THE PROPERTY DISPOSITION CLAUSES, AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF CALIFORNIA.

7. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. IF YOU ELECT TO USE WITNESSES, ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL OR, INSTEAD OF USING WITNESSES, YOU MAY ELECT TO ACKNOWLEDGE THIS WILL BEFORE A NOTARY PUBLIC AT ANY PLACE WITHIN THIS STATE.

8. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

9. THIS WILL TREATS MOST ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

11. IF YOU HAVE CHILDREN UNDER 21 YEARS OF AGE, YOU MAY WISH TO USE THE CALIFORNIA STATUTORY WILL WITH TRUST OR ANOTHER TYPE OF WILL.

[A printed form for a California statutory will shall set forth the above notice in 10-point bold face type.]

**CALIFORNIA STATUTORY WILL OF**

(Insert Your Name)

**Article 1. Declaration**

This is my will and I revoke any prior wills and codicils.

**Article 2. Disposition of My Property**

**2.1. PERSONAL AND HOUSEHOLD ITEMS.** I give all my furniture, furnishings, household items, personal automobiles and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

**2.2. CASH GIFT TO A PERSON OR CHARITY.** I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

|   |   |
|---|---|
| <p>FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print.)</p> | <p>AMOUNT OF GIFT \$ _____</p> <p>AMOUNT WRITTEN OUT: _____ Dollars</p> |
|   | <p>_____<br/>Signature of Testator</p>                                  |

**2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE").** I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I fail to sign in any box, the property will be distributed as if I did not make a will.

**PROPERTY DISPOSITION CLAUSES (Select one.)**

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD.

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING.

(c) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL.

**Article 3. Nominations of Executor and Guardian**

**3.1. EXECUTOR (Name at least one.)**

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR. \_\_\_\_\_

SECOND EXECUTOR. \_\_\_\_\_

THIRD EXECUTOR. \_\_\_\_\_

3.2. GUARDIAN (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.)

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.2 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.2 to serve as guardian of the property of that child. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST GUARDIAN OF THE PERSON. \_\_\_\_\_

FIRST GUARDIAN OF THE PROPERTY. \_\_\_\_\_

SECOND GUARDIAN OF  
THE PERSON. \_\_\_\_\_

SECOND GUARDIAN OF  
THE PROPERTY. \_\_\_\_\_

THIRD GUARDIAN OF  
THE PERSON. \_\_\_\_\_

THIRD GUARDIAN OF  
THE PROPERTY. \_\_\_\_\_

3.3. BOND. My signature in this box means that a bond is not required for any individual named in this will as executor or guardian. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code. (The bond provides a fund to pay those who do not receive the share of your estate to which they are entitled, including your creditors, because of improper performance of duties by the executor or guardian. Bond premiums are paid out of your estate.)



I sign my name to this California Statutory Will  
 on \_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_\_  
                   Date                    City                    State

\_\_\_\_\_  
 Signature of Testator

**STATEMENT OF WITNESSES** (~~For~~ If you elect to use witnesses instead of having the will notarized, you must use two adult witnesses and three would be preferable.)

Each of us declares under penalty of perjury under the laws of California that the testator signed this California statutory will in our presence, all of us being present at the same time, and we now, at the testator's request, in the testator's presence, and in the presence of each other, sign below as witnesses, declaring that the testator appears to be of sound mind and under no duress, fraud, or undue influence.

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
 Print Name \_\_\_\_\_  
 Here: \_\_\_\_\_

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
 Print Name \_\_\_\_\_  
 Here: \_\_\_\_\_

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
 Print Name \_\_\_\_\_  
 Here: \_\_\_\_\_

CERTIFICATE OF ACKNOWLEDGMENT OF  
NOTARY PUBLIC (You may use acknowledgment  
before a notary public instead of the statement of  
witnesses.)

State of California )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,  
before me, \_\_\_\_\_,

(here insert name of notary public)

personally appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to  
be the person whose name is subscribed to this instrument,  
and acknowledged that he or she executed it. I declare  
under penalty of perjury that the person whose name is  
subscribed to this instrument appears to be of sound mind  
and under no duress, fraud, or undue influence.

NOTARY SEAL

\_\_\_\_\_  
(Signature of Notary Public)

Comment. Section 6240 is amended to permit a California statutory will to be acknowledged before a notary public at any place within this state instead of using two witnesses, consistent with general wills law. See Sections 6110, 6110.5.



SEC. 4. Section 6241 of the Probate Code is amended to read:

6241. The following is the California statutory will with trust form:

**CALIFORNIA STATUTORY WILL WITH TRUST**

**NOTICE TO THE PERSON WHO SIGNS THIS WILL:**

1. THIS FORM CONTAINS A TRUST FOR YOUR DESCENDANTS. IF YOU DO NOT WANT TO CREATE A TRUST, DO NOT USE THIS FORM.

2. IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY.

3. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S SHARE OF COMMUNITY PROPERTY, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

4. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

5. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS CALIFORNIA STATUTORY WILL. IF YOU DO, THE CHANGE OR THE DELETED OR ADDED WORDS WILL BE DISREGARDED AND THIS WILL MAY BE GIVEN EFFECT AS IF THE CHANGE, DELETION, OR ADDITION HAD NOT BEEN MADE. YOU MAY REVOKE THIS CALIFORNIA STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

6. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

7. THE FULL TEXT OF THIS CALIFORNIA STATUTORY WILL, THE DEFINITIONS AND RULES OF CONSTRUCTION, THE PROPERTY DISPOSITION CLAUSES, AND THE MANDATORY CLAUSES

FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF CALIFORNIA.

8. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. IF YOU ELECT TO USE WITNESSES, ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL OR, INSTEAD OF USING WITNESSES, YOU MAY ELECT TO ACKNOWLEDGE THIS WILL BEFORE A NOTARY PUBLIC AT ANY PLACE WITHIN THIS STATE.

9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

10. THIS WILL TREATS MOST ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

11. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

[A printed form for a California Statutory Will With Trust shall set forth the above notice in 10-point bold face type.]

**CALIFORNIA STATUTORY WILL  
WITH TRUST OF**

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(Insert Your Name)

**Article 1. Declaration**

**This is my will and I revoke any prior wills and codicils.**

**Article 2. Disposition of My Property**

**2.1. PERSONAL AND HOUSEHOLD ITEMS.** I give all my furniture, furnishings, household items, personal automobiles, and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

**2.2. CASH GIFT TO A PERSON OR CHARITY.** I

make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

|  |   |
|--|---|
| <p>FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print.):</p> | <p>AMOUNT OF GIFT<br/>\$ _____</p> <p>AMOUNT WRITTEN OUT:<br/>_____ Dollars</p> |
|  | <p>_____<br/>Signature of Testator</p>  |

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I fail to sign in any box, the property will be distributed as if I did not make a will.

**PROPERTY DISPOSITION CLAUSES (Select one.)**

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. \_\_\_\_\_

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. I LEAVE NOTHING TO MY SPOUSE, IF LIVING. \_\_\_\_\_

**Article 3. Nominations of Executor, Trustee, and Guardian**

**3.1. EXECUTOR (Name at least one.)**

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR. \_\_\_\_\_

SECOND EXECUTOR. \_\_\_\_\_

THIRD EXECUTOR. \_\_\_\_\_

**3.2. TRUSTEE (Name at least one.)**

Because it is possible that after I die my property may be put into a trust, I nominate the person or institution named in the first box of this paragraph 3.2 to serve as trustee of that trust. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST TRUSTEE. \_\_\_\_\_

SECOND TRUSTEE. \_\_\_\_\_

THIRD TRUSTEE. \_\_\_\_\_

3.3. GUARDIAN (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.)

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.3 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.3 to serve as guardian of the property of that child. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST GUARDIAN OF  
THE PERSON. \_\_\_\_\_

FIRST GUARDIAN OF  
THE PROPERTY. \_\_\_\_\_

SECOND GUARDIAN OF  
THE PERSON. \_\_\_\_\_

SECOND GUARDIAN OF  
THE PROPERTY. \_\_\_\_\_

THIRD GUARDIAN OF  
THE PERSON. \_\_\_\_\_

THIRD GUARDIAN OF  
THE PROPERTY. \_\_\_\_\_

3.4. BOND. My signature in this box means that a bond is not required for any individual named in this will as executor, trustee, or guardian. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code. (The bond provides a fund to pay those who do not receive the share of your estate to which they are entitled, including your creditors, because of improper performance of duties by the executor, trustee, or guardian. Bond premiums are paid out of your estate.)



I sign my name to this California Statutory Will  
With Trust on \_\_\_\_\_ at \_\_\_\_\_,  
Date City State

\_\_\_\_\_  
Signature of Testator

**STATEMENT OF WITNESSES** (~~you~~ If you elect to use witnesses instead of having the will notarized, you must use two adult witnesses, and three witnesses would be preferable.)

Each of us declares under penalty of perjury under the laws of California that the testator signed this California statutory will with trust in our presence, all of us being present at the same time, and we now, at the testator's request, in the testator's presence, and in the presence of each other, sign below as witnesses, declaring that the testator appears to be of sound mind and under no duress, fraud, or undue influence.

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name  
Here: \_\_\_\_\_

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name  
Here: \_\_\_\_\_

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name  
Here: \_\_\_\_\_



**CERTIFICATE OF ACKNOWLEDGMENT OF  
NOTARY PUBLIC (You may use acknowledgment  
before a notary public instead of the statement of  
witnesses.)**

State of California }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,  
before me, \_\_\_\_\_,  
(here insert name of notary public)

personally appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to  
be the person whose name is subscribed to this  
instrument, and acknowledged that he or she executed it.  
I declare under penalty of perjury that the person whose  
name is subscribed to this instrument appears to be of  
sound mind and under no duress, fraud, or undue  
influence.

**NOTARY SEAL**

\_\_\_\_\_  
(Signature of Notary Public)

Comment. Section 6241 is amended to permit a California statutory will with trust to be acknowledged before a notary public at any place within this state instead of using two witnesses, consistent with general wills law. See Sections 6110, 6110.5.