

## Memorandum 82-65

Subject: Study L-619 - Probate Law (California Statutory Will)

Assembly Bill No. 2452 has been introduced at the current legislative session to provide for a "California statutory will." The bill provides for a printed will form with a limited choice of dispositive clauses and a number of mandatory clauses. A person can execute the will by complying with the provisions for its execution. No alteration of the form is permitted except in accordance with the instructions for execution of the form. The statutory will can be used to dispose of property only to one's spouse and descendants.

Assembly Bill No. 2452 passed the Assembly unanimously and is now pending in the Senate. Assuming that the bill will become law, some provision must be made for its inclusion in the Commission's comprehensive statute relating to wills and intestate succession. Attached is a draft of provisions that would incorporate the substance of Assembly Bill No. 2452 as it now exists into the comprehensive statute. If amendments are made to Assembly Bill No. 2452 in the Senate, the staff will incorporate the changes made by the amendments into the attached draft.

The attached draft is submitted for review by the Commission and its consultants. You should not be reluctant to suggest revisions in the draft.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

## CHAPTER 6. CALIFORNIA STATUTORY WILL

## Article 1. Definitions and Rules of Construction

§ 205.010. Application of definitions and rules of construction

205.010. Unless the provision or context clearly requires otherwise, the definitions and rules of construction set out in this article govern the construction of this chapter.

Comment. Section 205.010 continues the substance of the introductory clause of former Section 56.

§ 205.020. Testator

205.020. "Testator" means any person choosing to adopt a California statutory will.

Comment. Section 205.020 continues subdivision (a) of former Section 56.

§ 205.030. Spouse

205.030. "Spouse" means the testator's husband or wife at the time the testator signs a California statutory will.

Comment. Section 205.030 continues subdivision (b) of former Section 56.

§ 205.040. Executor; trustee

205.040. "Executor" and "trustee" mean both the persons or institutions so designated in a California statutory will and any person or institution acting at any time as the executor or administrator under a California statutory will or as the trustee under a California statutory will. Executor and trustee shall be construed as masculine, feminine, or neuter as the context and circumstances require.

Comment. Section 205.040 continues subdivision (c) of former Section 56.

§ 205.050. Descendants

205.050. "Descendants" means children, grandchildren, and other lineal issue of all degrees.

Comment. Section 205.050 continues subdivision (d) of former Section 56.

§ 205.060. Class designation of "descendants" or "children"

205.060. (a) Except as provided in subdivision (b), a class designation of "descendants" or "children" includes the present members of the class by birth or adoption and the members subsequently born to or legally adopted into the class.

(b) For the purposes of subdivision (a), a person who is adopted by a descendant of a testator and is not and has not been raised as a member of the adopting person's household shall not be considered a descendant of the testator.

Comment. Section 205.060 continues the substance of subdivision (e) of former Section 56.

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§ 205.070. Construction of genders and singular and plural

205.070. Masculine pronouns include the feminine, and plural and singular words include each other, where appropriate.

Comment. Section 205.070 continues subdivision (f) of former Section 56.

§ 205.080. Use of "shall" or "may" in a California statutory will

205.080. (a) If a California statutory will states that a person shall perform an act, the person is required to perform that act.

(b) If a California statutory will states that a person may do an act, the person's decision to do or not to do the act shall be made in the exercise of the person's fiduciary powers.

Comment. Section 205.080 continues the substance of subdivision (g) of former Section 56.

§ 205.090. Manner of distribution to "descendants"

205.090. Whenever a distribution under a California statutory will is to be made to a person's descendants, the distribution shall be made equally to the descendants if they are of the same degree of kinship to the person and if not then those of a more remote degree shall take by right of representation.

Comment. Section 205.090 continues subdivision (h) of former Section 56.

§ 205.100. Person

205.100. "Person" includes individuals and corporations.

Comment. Section 205.100 continues subdivision (i) of former Section 56.

Article 2. General Provisions

§ 205.200. Persons who may execute California statutory will

205.200. Any person of sound mind and over the age of 18 may execute a California statutory will under the provisions of this chapter.

Comment. Section 205.200 continues former Section 56.1.

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§ 205.210. Method of executing California statutory will

205.210. (a) The only method of executing a California statutory will is for all of the following to occur:

(1) The testator shall complete the appropriate blanks and shall sign the will.

(2) Each witness shall sign his or her name as a witness either (A) to the testator's signing of the will or (B) to the testator's acknowledging that the testator signed the will or that it is the testator's will.

(b) The execution of the attestation clause provided in the California statutory will by two or more witnesses shall satisfy Section 329.

Comment. Section 205.210 continues the substance of former Section 56.2 except that the requirement of paragraph (2) of subdivision (a) replaces the former requirement that the witnesses observe the testator signing and sign their names in the presence of the testator. This substitution conforms the provision to the requirement generally applicable to wills. See Section 201.010.

§ 205.220. Contents of California statutory will

205.220. A California statutory will includes (1) the contents of the California Statutory Will Form set forth in Section 205.510, (2) all of the notices, and (3) by reference, the full texts of each of the following:

(a) The definitions and rules of construction set forth in Article 1 (commencing with Section 205.010).

(b) The clause set forth in Section 205.520.

(c) The property disposition clause adopted by the testator as set forth in Section 205.530.

(d) The mandatory clauses, if applicable, set forth in Section 205.540.

Comment. Section 205.220 continues the substance of former Section 56.3.

§ 205.230. Effect of selection of more than one property disposition clause; effect of failure to make selection

205.230. A testator who executes a California statutory will shall be deemed to have chosen the property disposition clause appearing in paragraph 2.2(e) of the California Statutory Will Form, set forth in Section 205.510, in either of the following cases:

(a) Where more than one property disposition clause appearing in paragraph 2.2 of the California Statutory Will Form is selected.

(b) Where none of the property disposition clauses appearing in paragraph 2.2 of the California Statutory Will Form is selected.

Comment. Section 205.230 continues the substance of former Section 56.4.

§ 205.240. Effect of titles of clauses

205.240. Only the texts of the property disposition clauses and the mandatory clauses shall be considered in determining their meaning. Their titles shall be disregarded.

Comment. Section 205.240 continues former Section 56.5.

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§ 205.250. Revocation; amendment by codicil; additions or deletions on form to be disregarded unless in accordance with instructions

205.250. (a) A California statutory will may be revoked and may be amended by codicil.

(b) Any additions to or deletions from the California statutory will on the face of the California Statutory Will Form, other than in accordance with the instructions, shall be ineffective and shall be disregarded.

Comment. Section 205.250 continues former Section 56.6.

Article 3. Form and Full Text of Clauses

§ 205.510. California Statutory Will Form

205.510. 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. BY THIS WILL, YOU MAY DISPOSE OF YOUR PROPERTY ONLY TO YOUR SPOUSE, YOUR CHILDREN, AND OTHER DESCENDANTS. YOU MAY NOT USE THIS WILL TO DISPOSE OF YOUR PROPERTY TO ANYONE ELSE EXCEPT AS PROVIDED BY THE LAW WHICH APPLIES TO PERSONS WHO DIE WITHOUT WILLS.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY OTHER PERSON BY OPERATION OF LAW OR BY ANY CONTRACT OTHER THAN A WILL. 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 AND 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 FINANCIAL ADVISOR.

4. YOU CANNOT CHANGE OR ADD WORDS TO THE FACE OF THIS CALIFORNIA STATUTORY WILL. 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, AND THE PROPERTY DISPOSITION AND 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.

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. YOU SHOULD MAKE AND SIGN A NEW WILL IF YOU MARRY SOMEONE AFTER YOU SIGN THIS 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

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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 EFFECTS. I give all my personal and household items to my spouse, if living, otherwise they shall be divided equally among my children who survive me.

2.2. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph 2.2 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. If I sign in more than one box or if I fail to sign in any box, my property will go under Property Disposition Clause (e) and I realize that means my 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 DESCENDANTS.

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

(c) TO MY DESCENDANTS. I LEAVE NOTHING TO MY SPOUSE.

(d) TO MY DESCENDANTS. 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.

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

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 the others shall serve in the order I list them in the other boxes.

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

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

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

3.2. TRUSTEE (Only necessary if Property Disposition Clause 2.2 (b) or 2.2 (d) is adopted. 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 the others shall 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.)

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

FIRST GUARDIAN. \_\_\_\_\_

SECOND GUARDIAN. \_\_\_\_\_

THIRD GUARDIAN. \_\_\_\_\_

3.4. BOND

My signature in this box means that a bond is not required for any individual (a) executor, (b) trustee, or (c) guardian named in this will. If I do not sign in this box, then a bond is required for each of those persons as set forth in Chapter 7 (commencing with Section 540) of Division 3 of the Probate Code.

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

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

STATEMENT OF WITNESSES (You must use at least two adult witnesses.)

Each of us declares under penalty of perjury under the laws of California that the testator signed and executed this California statutory will as his or her last will, that to the best of our knowledge the testator is of sound mind and under no duress, fraud, or undue influence, and that each of us signs below as witness either (1) to the testator's signing of the will or (2) to the testator's acknowledging that the testator signed the will or that it is the testator's will.

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

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

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

Comment. Section 205.510 continues former Section 56.7 except that the "Statement of Witnesses" has been revised to conform to the requirements of Section 205.210(a)(2).

§ 205.520. Full text of paragraph 2.1 of California Statutory Will Form

205.520. The following is the full text of paragraph 2.1 of the California Statutory Will Form appearing in Section 205.510.

(a) If my spouse survives me, I give my spouse all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use. If my spouse does not survive me, the executor shall distribute those items among my children who survive me, and shall distribute those items in as nearly equal shares as feasible in the executor's

discretion. If none of my children survive me, the items described in this paragraph shall become part of the residuary estate.

(b) If a child of mine is a minor at the time any of the items are distributable to that child, the items may be delivered without bond to the guardian of the child's person or estate or to any adult person with whom the child resides and who has the care or control of the child, to be retained by that person for the child until the child attains the age of 18 years, or dies, at which time the property shall be delivered to the child if living, otherwise to the child's estate. The executor shall be entitled to be discharged from liability for any property so delivered upon filing the receipt of the person taking possession of the property on behalf of the minor.

Comment. Section 205.520 is the same in substance as former Section 56.8.

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§ 205.530. Full text of property disposition clauses referred to in paragraph 2.2. of California Statutory Will Form

205.530. The following are the full texts of the property disposition clauses referred to in paragraph 2.2 of the California Statutory Will Form set forth in Section 205.510.

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY DESCENDANTS.

If my spouse survives me, then I give all my residuary estate to my spouse. If my spouse does not survive me, then I give all my residuary estate to my descendants who survive me.

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

(1) If my spouse survives me, then I give all my residuary estate to my spouse.

(2) If my spouse does not survive me and if any child of mine under 21 years of age survives me, then I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to

or for the benefit of any one or more of my descendants of any age as much, or all, of the (i) principal or (ii) net income of the trust, or (iii) both, as the trustee deems necessary for the health, support, maintenance, and education of my descendants. Any undistributed income shall be accumulated and added to principal. "Education" includes, but is not limited to, college, graduate, and postgraduate studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute in equal or unequal shares and to any one or more of my descendants to the exclusion of any other or others of them. The trustee may take into account other income or outside resources of my descendants in deciding on distributions.

(B) The earliest time when there is no living child of mine under 21 years of age is the time when the trust terminates. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants who are living when the trust terminates.

(3) If my spouse does not survive me and if no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me.

(c) TO MY DESCENDANTS. I LEAVE NOTHING TO MY SPOUSE.

I give all my residuary estate to my descendants who survive me. I leave nothing to my spouse.

(d) TO MY DESCENDANTS 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.

(1) I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my descendants of any age as much or all, of the (i) principal or (ii) net income of the trust, or (iii) both as the trustee deems necessary for the health, support, maintenance, and education of my descendants. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, graduate, and postgraduate studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute in equal or unequal shares and to any one or more of my descendants to the exclusion of any other or others of them. The trustee may take into account other income or outside resources of my descendants in deciding on distributions.

(B) The earliest time when there is no living child of

mine under 21 years of age is the time when the trust terminates. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants who are living when the trust terminates.

(2) If no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me.

(3) I leave nothing to my spouse.

(e) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL:

The executor shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of California in effect on the date of my death relating to the succession of separate property.

Comment. Section 205.530 continues the substance of former Section 56.9. The limitation in the last paragraph of former Section 56.9 to the laws relating to the succession of separate property "not acquired from a parent, grandparent, or predeceased spouse" has been omitted, since the former special provisions relating to succession of property acquired from ancestors have been repealed.

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§ 205.540. Mandatory clauses

205.540. The mandatory clauses of all California statutory wills are as follows:

(a) **INTESTATE DISPOSITION.** (1) If the testator has not made an effective disposition of the residuary estate, the executor shall distribute it to the testator's heirs at law, their identities and respective shares to be determined according to the laws of the State of California in effect on the date of the testator's death relating to the succession of separate property.

(2) If, at the termination of any trust created in the California statutory will, there is no effective disposition of the remaining trust assets, then the trustee shall distribute those assets to the testator's then living heirs at law, their identities and respective shares to be determined as though the testator had died on the date of the trust's termination and according to the laws of the State of California then in effect relating to the succession of separate property.

**(b) POWERS OF EXECUTOR, TRUSTEE, AND GUARDIAN.**

(1) The executor or the trustee may distribute assets to any person who agrees to serve as custodian for a minor beneficiary under the California Uniform Gifts to Minors Act or other similar law.

The executor and the trustee are free of liability and are discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(2) The executor shall have all powers listed in Section 591.6 and these powers may be exercised without court authorization unless court authorization is required by law. In addition, the executor shall have the power to nominate (A) a coexecutor to serve with the executor and (B) a successor executor to succeed the last executor designated by the testator. A coexecutor or successor executor who is an individual nominated under this power shall serve with bond.

(3) The trustee shall have all the powers listed in Section 1120.2. The trustee may exercise those powers without court authorization.

(4) In addition to the powers granted in the foregoing paragraphs (2) and (3), the executor or trustee may:

(A) Hire and pay the fees of investment advisors, certified public accountants, tax advisors, agents, brokers, attorneys, and other assistants for the administration of the estate or trust and for the management of any estate or trust asset. For those services, the executor or trustee may hire any firm of which the executor or trustee is a member, employee, shareholder, or consultant. The executor or trustee shall not have any liability for any act or omission of any person or firm the executor or trustee chooses with reasonable care.

(B) On any distribution of assets from the estate or trust, the executor and trustee shall have the discretion to partition, allot, and distribute the assets (1) in kind, including undivided interests in an asset or in any part of it, or (2) partly in cash and partly in kind, or (3) entirely in cash. If a distribution is being made to more than one beneficiary, the executor or trustee shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(5) A guardian of the person nominated in the California statutory will shall have the same authority with respect to the person of the ward as a parent having legal custody of a child would have. A guardian of the estate nominated in the California statutory will shall have all of the powers specified in Section 2591. All powers granted to guardians in this paragraph may be exercised without court authorization.

(6) This paragraph applies to any trusteeship vacancy not provided for in the California statutory will. Only when serving as trustee or successor trustee may a trustee sign and file a document naming one or more persons, in the order of preference and succession listed in that document, as successor trustees to fill any unprovided for vacancy. The document shall be filed in the court in which the California statutory will is probated. If a trustee files such a nominating document, that trustee or any later trustee may, while serving as trustee, revoke or amend that nominating document at any time by signing and filing a new nominating document.

(7) All persons who have any interest in the California statutory will are bound by all discretionary determinations the executor or the trustee make in good faith under the authority granted in the California statutory will.

Comment. Section 205.540 continues the substance of former Section 56.10. The phrase "not acquired from a parent, grandparent, or predeceased spouse" has been omitted, since the former special provisions relating to succession of property acquired from ancestors have been repealed.

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§ 205.550. Will includes only texts of clauses as they exist when will executed

205.550. Except as specifically provided in other parts of this chapter, a California statutory will shall include only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the California statutory will is executed.

Comment. Section 205.550 continues former Section 56.11.