

Seventh Supplement to Memorandum 82-70

Subject: Study L-625 - Probate Code (Tentative Recommendation--
California Statutory Will §§ 205.010-205.560)

Attached is the portion of the proposed statute relating to the California statutory will (a will executed on a printed will form) and the portion of the preliminary part of the tentative recommendation relating to this portion of the recommended legislation.

The recommended legislation continues the latest version of the pending legislation that would provide for a "California statutory will" with the changes indicated in the attached preliminary portion of the tentative recommendation. We understand that a few changes will be made in the pending legislation and we plan to incorporate those changes into our recommended legislation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

California Statutory Will

Legislation enacted in 1982¹ provides for a "California statutory will"--a will executed by the testator on a printed will form.² The proposed law continues the substance of the 1982 statute with a few revisions needed to conform provisions of the 1982 statute to the proposed provisions applicable to wills generally.³

1. 1982 Cal. Stats. ch. _____, enacting Probate Code §§ 56-56.14. [AB 2452].
2. The statute sets out two printed will forms. The printed forms give the testator a limited choice of dispositive clauses and permit the testator to nominate one or more persons or institutions as executor or as guardian of the testator's minor children. One of the forms includes provisions for a trust and permits the testator also to nominate one or more persons or institutions as trustee. No alteration may be made in the printed form except in accordance with the instructions for execution of the form.
3. The significant revisions of the 1982 statute made in the proposed law are:
 - (1) The requirements for witnessing the will are conformed to those generally applicable to wills under the proposed law. See discussion under "Formal Requirements," supra.
 - (2) A provision is added that a disposition of property by the will to the testator's spouse or a nomination of the testator's spouse as an executor, trustee, or guardian is revoked if the marriage of the testator terminates after execution of the will as a result of dissolution or annulment. This adopts the general rule of the proposed law that dissolution revokes a disposition to or a nomination of a former spouse. See discussion under "Revocation by Dissolution or Annulment," supra.
 - (3) References to the laws relating to the succession of separate property "not acquired from a parent, grandparent, or predeceased spouse" are omitted, consistent with the repeal of the ancestral property doctrine by the proposed law. See discussion under "Ancestral Property Doctrine," supra.Conforming revisions have been made in other provisions of the 1982 statutes to reflect these changes, and other technical revisions have been made.

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 otherwise requires, these definitions and rules of construction 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 a 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. As to the effect of termination of the marriage after execution of the will by divorce, dissolution, or annulment, see Section 205.260.

§ 205.040. Executor

205.040. "Executor" means both the person so designated in a California statutory will and any other person acting at any time as the executor or administrator under a California statutory will. "Executor" 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.

§ 205.045. Trustee

205.045. "Trustee" means both the person so designated in a California statutory will and any other person acting at any time as the

trustee under a California statutory will. "Trustee" shall be construed as masculine, feminine, or neuter as the context and circumstances require.

Comment. Section 205.045 continues subdivision (d) of former Section 56.

405/873

§ 205.050. Descendants

205.050. "Descendants" means children, grandchildren, and their lineal descendants 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 class designation of "descendants" or "children" includes (1) persons legally adopted into the class during minority and (2) persons naturally born into the class (in or out of wedlock). An adoption of such person by another within or outside the family shall be disregarded for the purposes of a California statutory will. A reference to "descendants" in the plural includes a single descendant where the context so requires.

Comment. Section 205.060 continues the substance of subdivision (f) 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 (g) 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 (h) 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 property shall be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave descendants then living; and each living descendant of the nearest degree shall receive one share and the share of each deceased descendant of that same degree shall be divided among his or her descendants in the same manner.

Comment. Section 205.090 continues the substance of subdivision (i) of former Section 56. The rule stated in Section 205.090 is consistent with the general rule concerning taking by representation. See Section 220.060 (representation).

§ 205.100. Person

205.100. "Person" includes individuals and corporations.

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

Article 2. General Provisions

§ 205.200. Persons who may execute California statutory will

205.200. Any individual 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

acknowledgment that the testator signed the will or (C) to the testator's acknowledgment that the will is the testator's will.

(b) The execution of the attestation clause provided in the California statutory will by two or more witnesses satisfies 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. Two California statutory wills; contents

205.220. (a) There are two California statutory wills:

(1) A California statutory will.

(2) A California statutory will with trust.

(b) Each California statutory will includes all of the following:

(1) The contents of the appropriate California Statutory Will Form, including the notice set out in Section 205.510 or 205.515.

(2) 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.

(d) The mandatory clauses, if applicable, set forth in Sections 205.540 and 205.545.

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. If more than one property disposition clause appearing in paragraph 2.3 of a California Statutory Will Form is selected, or if none is selected, the property of a testator who executes a California statutory will shall be distributed to the testator's descendants as if the testator did not execute a will.

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.

38474

§ 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 in the same manner as other wills.

(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, are ineffective and shall be disregarded.

Comment. Section 205.250 continues former Section 56.6.

§ 205.260. Revocation by divorce

205.260. (a) If after executing a California statutory will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes any disposition of property made by the will to the former spouse and any nomination of the former spouse as executor, trustee, or guardian made by the will. If any disposition or nomination is revoked solely by this section, it is revived by the testator's remarriage to the former spouse.

(b) In case of revocation by dissolution or annulment:

(1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator and Section 204.320 does not apply.

(2) Provisions nominating the former spouse as executor, trustee, or guardian shall be interpreted as if the former spouse failed to survive the testator.

(c) For purposes of this section, divorce or annulment means any divorce, dissolution, annulment, or adjudication of nullity which would exclude the spouse as a surviving spouse within the meaning of Section 100.470. A decree of legal separation which does not terminate the status of husband and wife is not a divorce or dissolution for purposes of this section.

(d) This section applies to any California statutory will, without regard to the time when the will was executed, if the testator dies after June 30, 1984.

Comment. Section 205.260 is a new provision that is drawn from and is consistent with Section 202.030. See the Comment to that section.

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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.

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 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 OR ADD WORDS TO THE FACE OF THIS CALIFORNIA STATUTORY WILL. IF YOU DO, THE CHANGE OR ADDED WORDS WILL BE DISREGARDED AND THIS WILL MAY BE GIVEN EFFECT AS IF THE CHANGE 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, 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. *YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF 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 *OR DIVORCE* AFTER YOU SIGN THIS 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.]

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 numerical 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><i>NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print.).</i></p>	<p><i>AMOUNT OF GIFT</i> \$ _____</p> <p><i>AMOUNT WRITTEN OUT:</i> _____ Dollars</p>
	<p>_____ <i>Signature of Testator</i></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, my property will go under Property Disposition Clause (c) 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 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.**

(c) *TO BE DIS-
TRIBUTED 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 the others shall 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.)

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

FIRST GUARDIAN. _____

SECOND GUARDIAN.

THIRD GUARDIAN. —

3.3. BOND

My signature in this box means that a bond is not required for any individual executor or 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 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 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 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 acknowledgment that the testator signed the will or (3) to the testator's acknowledgment that this will 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) and other clarifying revisions have been made.

§ 205.515. California Statutory Will With Trust Form

205.515. 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 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 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 OR ADD WORDS TO THE FACE OF THIS CALIFORNIA STATUTORY

WILL. IF YOU DO, THE CHANGE OR ADDED WORDS WILL BE DISREGARDED AND THIS WILL MAY BE GIVEN EFFECT AS IF THE CHANGE 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, AND THE PROPERTY DISPOSITION AND 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.

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

(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 and in the amount stated in words and numerical 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>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>_____ <i>Signature of Testator</i></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, 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 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.**

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(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. —

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 (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 or institution 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 or institution 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 the Probate Code.

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

Signature of Testator

STATEMENT OF WITNESSES *(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 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 acknowledgment that the testator signed the will or (3) to the testator's acknowledgment that this will 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 205.515 continues former Section 56.8, except that the "Statement of Witnesses" has been revised to conform to the requirements of Section 205.210(a)(2) and other clarifying revisions have been made.

§ 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 both California Statutory Will Forms appearing in this draft.

(a) If my spouse survives me, I give may spouse all my books, jewelry, clothing, personal 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.

Comment. Section 205.520 is the same in substance as former Section 56.9.

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§ 205.530. Full text of property disposition clauses of California Statutory Will Form

205.530. The following are the full texts of the property disposition clauses referred to in paragraph 2.3 of the California Statutory Will Form set forth in Section 205.510.

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

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 CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE.

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

(c) 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 and relating to the succession of separate property.

Comment. Section 205.530 continues the substance of former Section 56.10. 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 not been continued.

405/958

§ 205.535. Full text of property disposition clauses of California Statutory Will With Trust Form

205.535. The following are the full texts of the property disposition clauses referred to in paragraph 2.3 of the California Statutory Will With Trust Form set forth in Section 205.515.

(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.

(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 children and the descendants of any deceased child (the beneficiaries) 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 their 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, postgraduate, and vocational studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account, so far as known to the trustee, the beneficiaries' other income, outside resources, or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

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

(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.

(b) TO MY CHILDREN 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 children and the descendants of any deceased child (the beneficiaries) 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 their health, support, maintenance, and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, graduate, postgraduate, and vocational studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account, so far as known to the trustee, the beneficiaries' other income, outside resources, or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

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

(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.

Comment. Section 205.535 continues former Section 56.11.

§ 205.540. Mandatory clauses of all California statutory wills

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

(a) **INTESTATE DISPOSITION.** 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 and relating to the succession of separate property.

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

(1) *In addition to any powers now or hereafter conferred upon executors by law, including all powers granted under the Independent Administration of Estates Act, the executor shall have the power to: (A) sell estate assets at public or private sale, for cash or on finance terms, (B) lease estate assets without restriction as to duration, and (C) invest any surplus moneys of the estate in real or personal property, as the executor deems advisable.*

(2) *The executor may distribute estate assets otherwise distributable to a minor beneficiary to (A) the guardian of the minor's person or estate, (B) any adult person with whom the minor resides and who has the care, custody or control of the minor, or (C) a custodian, serving on behalf of the minor under the Uniform Gifts to Minors Act of any state.*

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

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

(4) 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 a California statutory will shall have all of the powers *conferred by law*. All powers granted to guardians in this paragraph may be exercised without court authorization.

Comment. Section 205.540 continues the substance of former Section 56.12. 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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§ 205.545. Additional mandatory clauses for California statutory will with trust

205.545. In addition to the mandatory clauses contained in Section 205.540, the California Statutory Will With Trust Form shall incorporate the following mandatory clauses:

(a) INEFFECTIVE DISPOSITION. 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 and relating to the succession of separate property.

(b) POWERS OF TRUSTEE. (1) In addition to any powers now or hereafter conferred upon trustees by law the trustee shall have all the powers listed in Section 1120.2. The trustee may exercise those powers without court authorization.

(2) In addition to the powers granted in the foregoing paragraph, the trustee may:

(A) Hire and pay from the trust the fees of investment advisors, accountants, tax advisors, agents, attorneys, and other assistants for the administration of the trust and for the management of any trust asset and for any litigation affecting the trust. 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 (i) in kind, including undivided interests in an asset or in any part of it, or (ii) partly in cash and partly in kind, or (iii) 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 nonpro rata basis, with the assets valued as of the date of distribution.

(C) The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the Uniform Gifts to Minors Act of any state.

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

(c) **TRUST ADMINISTRATIVE PROVISIONS.** The following provisions shall apply to any trust created by a California Statutory Will With Trust:

(1) This paragraph applies to any trusteeship vacancy not provided for in the California *Statutory Will With Trust*. A trustee or successor trustee when serving under this will, may sign and file in the court in which the California statutory will is probated, a document naming one or more persons, other than a current beneficiary of the trust, in the order of preference and succession listed in that document, as successor trustees to fill any unprovided for vacancy. 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.

(2) The interests of trust beneficiaries are not transferable by voluntary or involuntary assignment or by operation of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy, or other legal process to the fullest extent permissible by law.

(3) A trustee serving under this will is entitled to reasonable compensation for (A) ordinary and extraordinary services and (B) all services in connection with the complete or partial termination of any trust created by this will.

(4) All persons who have any interest in a trust under a California statutory will with trust are bound by all discretionary determinations the trustee *makes* in good faith under the authority granted in the California *statutory will with trust*.

Comment. Section 205.545 continues former Section 56.13 except that the phrase "not acquired from a parent, grandparent, or predeceased spouse" has been omitted, the former special provisions relating to succession of property acquired from ancestors having been repealed.

§ 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 56.14 See also Section 205.260(d) (effect of divorce on disposition and nomination provisions).

§ 205.560. Law relating to execution of wills and creation of trusts unchanged

205.560. Except as specifically provided in this chapter, nothing in this chapter changes the substantive law of California relating to wills or trusts.

Comment. Section 205.560 is drawn from Section 2 of 1982 Cal. Stats. ch ____ [AB 2452].