

#L-625

9/16/82

Memorandum 82-96

Subject: Study L-625 - Probate Law and Procedure (California Statutory Will)

Attached is the latest version of Assembly Bill 2452. (We have only a few copies of the bill, and we attach a copy only on the copy of this memorandum that is sent to members of the Commission.) The bill was sent to the Governor in this form. At the time this memorandum was written, the Governor had not acted on the bill. However, we expect that he will approve the bill.

The staff has revised the previous version of the California statutory will provisions that are contained in our comprehensive statute. The revised version is included in the draft attached to Memorandum 82-91. Accordingly, you need not read the attached bill. However, we are providing you with this copy so that you can refer to it if necessary in connection with your study of the draft statute attached to Memorandum 82-91.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

AMENDED IN SENATE AUGUST 11, 1982  
AMENDED IN SENATE AUGUST 2, 1982  
AMENDED IN SENATE JUNE 18, 1982  
AMENDED IN ASSEMBLY APRIL 12, 1982  
AMENDED IN ASSEMBLY MARCH 22, 1982

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2452**

**Introduced by Assemblyman Harris  
(Coauthor: Assemblyman Wyman)**

January 25, 1982

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**An act to add Chapter 2.1 (commencing with Section 56)  
to Division 1 of the Probate Code, relating to wills.**

**LEGISLATIVE COUNSEL'S DIGEST**

**AB 2452, as amended, Harris. Statutory will.**

Under existing law, a person may dispose of his or her property by will. Existing law sets forth the requirements for the execution of a will, but does not provide the substantive provisions or terminology of the provisions of a will.

This bill would enact provisions for 2 forms of a statutory will, either of which a person could adopt upon complying with provisions for its execution. The statutory will or statutory will with trust would be a specific form with a limited choice of dispositive clauses, and would incorporate a number of mandatory clauses.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Chapter 2.1 (commencing with Section  
2 56) is added to Division 1 of the Probate Code, to read:

3  
4 CHAPTER 2.1. CALIFORNIA STATUTORY WILLS

5  
6 56. For purposes of this chapter, the following  
7 definitions and rules of construction shall apply unless, in  
8 a particular case, the context clearly requires otherwise:

9 (a) "Testator" means any person choosing to adopt a  
10 California statutory will.

11 (b) "Spouse" means the testator's husband or wife at  
12 the time the testator signs a California statutory will.

13 (c) "Executor" means both the person so designated  
14 in a California statutory will and any other person acting  
15 at any time as the executor or administrator under a  
16 California statutory will.

17 (d) "Trustee" means both the person so designated in  
18 a California statutory will and any other person acting at  
19 any time as the trustee under a California statutory will.

20 (e) "Descendants" means children, grandchildren,  
21 and their lineal descendants of all degrees.

22 (f) A class designation of "decendants" or "children"  
23 includes (1) persons legally adopted into the class during  
24 minority and (2) persons naturally born into the class (in  
25 or out of wedlock). The reference to "descendants" in  
26 the plural includes a single descendant where the context  
27 so requires.

28 (g) Masculine pronouns include the feminine, and  
29 plural and singular words include each other, where  
30 appropriate.

31 (h) If a California statutory will states that a person  
32 shall perform an act, the person is required to perform  
33 that act. If a California statutory will states that a person  
34 may do an act, the person's decision to do or not to do the  
35 act shall be made in the exercise of the person's fiduciary  
36 powers.

37 (i) Whenever a distribution under a California  
38 statutory will is to be made to a person's descendants, the

1 property is to be divided into as many equal shares as  
2 there are then living descendants of the nearest degree  
3 of living descendants and deceased descendants of that  
4 same degree who leave descendants then living; and each  
5 living descendant of the nearest degree shall receive one  
6 share and the share of each deceased descendant of that  
7 same degree shall be divided among his or her  
8 descendants in the same manner.

9 (j) "Person" includes individuals and institutions.

10 56.1. Any person of sound mind and over the age of  
11 18 may execute a California statutory will under the  
12 provisions of this chapter.

13 56.2. The only method of executing a California  
14 statutory will is for the following to occur:

15 (a) The testator shall do the following:

16 (1) Complete the appropriate blanks.

17 (2) Sign the will.

18 (b) The witnesses shall do the following:

19 (1) Observe the testator's signing.

20 (2) Sign their names in the presence of the testator.

21 The execution of the attestation clause provided in the  
22 California statutory will by two or more witnesses shall  
23 satisfy Section 329.

24 56.3. There are two California statutory wills: a  
25 California statutory will and a California statutory will  
26 with trust. Each will includes: (1) The contents of the  
27 appropriate California Statutory Will Form, including the  
28 notices that are set forth in Sections 56.7 and 56.8, and (2)  
29 by reference, the full texts of each of the following:

30 (a) The definitions and rules of construction set forth  
31 in Section 56.

32 (b) The clause set forth in Section 56.9.

33 (c) The property disposition clause adopted by the  
34 testator.

35 (d) The mandatory clauses set forth in Sections 56.12  
36 and, if applicable, 56.13.

37 56.4. If more than one property disposition clause  
38 appearing in paragraph 2.3 of a California Statutory Will  
39 Form is selected, or if none is selected, the property of a  
40 testator who signs a California statutory will shall be

1 distributed to the testator's heirs as if the testator did not  
2 make a will.

3 56.5. Only the texts of the property disposition clauses  
4 and the mandatory clauses shall be considered in  
5 determining their meaning. Their titles shall be  
6 disregarded.

7 56.6. (a) A California statutory will may be revoked  
8 and may be amended by codicil in the same manner as  
9 other wills.

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

14 56.7. The following is the California Statutory Will  
15 Form:

16

17

#### CALIFORNIA STATUTORY WILL

18

19 NOTICE TO THE PERSON WHO SIGNS THIS WILL:

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

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

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

38 4. YOU CANNOT CHANGE, DELETE, OR ADD  
39 WORDS TO THE FACE OF THIS CALIFORNIA  
40 STATUTORY WILL. YOU MAY REVOKE THIS

1 CALIFORNIA STATUTORY WILL, AND YOU MAY  
2 AMEND IT BY CODICIL.

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

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

13 7. THE WITNESSES TO THIS WILL SHOULD NOT  
14 BE PEOPLE WHO MAY RECEIVE PROPERTY  
15 UNDER THIS WILL. YOU SHOULD CAREFULLY  
16 READ AND FOLLOW THE WITNESSING  
17 PROCEDURE DESCRIBED AT THE END OF THIS  
18 WILL. ALL OF THE WITNESSES MUST WATCH YOU  
19 SIGN THIS WILL.

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

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

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

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

31  
32 [A printed form for a California statutory will shall set  
33 forth the above notice in 10-point bold face type.]

34 CALIFORNIA STATUTORY WILL OF  
35  
36

37 \_\_\_\_\_  
38 (Insert Your Name)

1 Article 1. Declaration

2  
3 This is my will and I revoke any prior wills and codicils.  
4

5 Article 2. Disposition of My Property  
6

7 2.1. PERSONAL AND HOUSEHOLD ITEMS. I give  
8 all my furniture, furnishings, household items, personal  
9 automobiles and personal items to my spouse, if living;  
10 otherwise they shall be divided equally among my  
11 children who survive me.

12 2.2. CASH GIFT TO A PERSON OR CHARITY. I  
13 make the following cash gift to the person or charity in  
14 the amount stated in words and figures in the box which  
15 I have completed and signed. If I fail to sign in the box,  
16 no gift is made. If the person mentioned does not survive  
17 me, or the charity designated does not accept the gift,  
18 then no gift is made. No death tax shall be paid from this  
19 gift.  
20

<p>21 22 FULL NAME OF 23 PERSON OR CHARITY 24 TO RECEIVE CASH 25 GIFT (Name only one. 26 Please print.) 27 28</p>	<p>AMOUNT OF GIFT \$ _____  AMOUNT WRITTEN OUT: _____ Dollars</p>
<p>29 30 31 32 33 34</p>	<p>_____ Signature of Testator</p>

35  
36 2.3. ALL OTHER ASSETS (MY "RESIDUARY  
37 ESTATE"). I adopt only one Property Disposition Clause  
38 in this paragraph 2.3 by writing my signature in the box  
39 next to the title of the Property Disposition Clause I wish  
40 to adopt. I sign in only one box. I write the words "not

1 used" in the remaining boxes. If I sign in more than one  
2 box or if I fail to sign in any box, ~~my~~ *the* property will go  
3 under Property Disposition Clause (c) and I realize that  
4 means the property will be distributed as if I did not  
5 make a will.

6  
7 PROPERTY DISPOSITION CLAUSES (Select one.)  
8

9 (a) TO MY SPOUSE IF  
10 LIVING; IF NOT LIV-  
11 ING, THEN TO MY  
12 CHILDREN AND  
13 THE DESCEND-  
14 ANTS OF ANY  
15 DECEASED CHILD.

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18 (b) TO MY CHILDREN  
19 AND THE DE-  
20 SCENDANTS OF  
21 ANY DECEASED  
22 CHILD. I LEAVE  
23 NOTHING TO MY  
24 SPOUSE, *IF LIVING.*

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29 (c) TO BE DISTRIBUT-  
30 ED AS IF I DID NOT  
31 HAVE A WILL.

32  
33  
34 Article 3. Nominations of Executor and Guardian

35  
36 3.1. EXECUTOR (Name at least one.)

37 I nominate the person or institution named in the first  
38 box of this paragraph 3.1 to serve as executor of this will.

39 If that person or institution does not serve, then ~~the~~  
40 ~~others shall~~ *I nominate the others to serve in the order I*

1 list them in the other boxes.

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

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

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

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

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

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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. \_\_\_\_\_

(S)

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.

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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 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: \_\_\_\_\_

56.8. The following is the California Statutory Will  
With Trust Form:

- 1 CALIFORNIA STATUTORY WILL WITH TRUST  
2  
3 NOTICE TO THE PERSON WHO SIGNS THIS WILL:  
4 1. THIS FORM CONTAINS A TRUST FOR YOUR  
5 DESCENDANTS. IF YOU DO NOT WANT TO  
6 CREATE A TRUST, DO NOT USE THIS FORM.  
7 2. IT MAY BE IN YOUR BEST INTEREST TO  
8 CONSULT WITH A CALIFORNIA LAWYER  
9 BECAUSE THIS STATUTORY WILL HAS SERIOUS  
10 LEGAL EFFECTS ON YOUR FAMILY AND  
11 PROPERTY.  
12 3. THIS WILL DOES NOT DISPOSE OF PROPERTY  
13 WHICH PASSES ON YOUR DEATH TO ANY PERSON  
14 BY OPERATION OF LAW OR BY ANY CONTRACT.  
15 FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF  
16 JOINT TENANCY ASSETS OR YOUR SPOUSE'S  
17 SHARE OF COMMUNITY PROPERTY, AND IT WILL  
18 NOT NORMALLY APPLY TO PROCEEDS OF LIFE  
19 INSURANCE ON YOUR LIFE OR YOUR  
20 RETIREMENT PLAN BENEFITS.  
21 4. THIS WILL IS NOT DESIGNED TO REDUCE  
22 DEATH TAXES OR ANY OTHER TAXES. YOU  
23 SHOULD DISCUSS THE TAX RESULTS OF YOUR  
24 DECISIONS WITH A COMPETENT TAX ADVISOR.  
25 5. YOU CANNOT, DELETE, CHANGE OR ADD  
26 WORDS TO THE FACE OF THIS CALIFORNIA  
27 STATUTORY WILL. YOU MAY REVOKE THIS  
28 CALIFORNIA STATUTORY WILL AND YOU MAY  
29 AMEND IT BY CODICIL.  
30 6. IF THERE IS ANYTHING IN THIS WILL THAT  
31 YOU DO NOT UNDERSTAND, YOU SHOULD ASK A  
32 LAWYER TO EXPLAIN IT TO YOU.  
33 7. THE FULL TEXT OF THIS CALIFORNIA  
34 STATUTORY WILL, THE DEFINITIONS AND RULES  
35 OF CONSTRUCTION, THE PROPERTY DISPOSITION  
36 CLAUSES, AND THE MANDATORY CLAUSES  
37 FOLLOW THE END OF THIS WILL AND ARE  
38 CONTAINED IN THE PROBATE CODE OF  
39 CALIFORNIA.  
40 8. THE WITNESSES TO THIS WILL SHOULD NOT

1 BE PEOPLE WHO MAY RECEIVE PROPERTY  
2 UNDER THIS WILL. YOU SHOULD CAREFULLY  
3 READ AND FOLLOW THE WITNESSING  
4 PROCEDURE DESCRIBED AT THE END OF THIS  
5 WILL. ALL OF THE WITNESSES MUST WATCH YOU  
6 SIGN THIS WILL.

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

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

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

14

15 [A printed form for a California Statutory Will With  
16 Trust shall set forth the above notice in 10-point bold  
17 face type.]  
18

19 CALIFORNIA STATUTORY WILL  
20 WITH TRUST OF

21

22

(Insert Your Name)

23

24

25 Article 1. Declaration

26

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

28

29 Article 2. Disposition of My Property

30

31 2.1. PERSONAL AND HOUSEHOLD ITEMS. I give  
32 all my furniture, furnishings, household items, personal  
33 automobiles, and personal items to my spouse, if living;  
34 otherwise they shall be divided equally among my  
35 children who survive me.

36 2.2. CASH GIFT TO A PERSON OR CHARITY. I  
37 make the following cash gift to the person or charity and  
38 in the amount stated in words and figures in the box  
39 which I have completed and signed. If I fail to sign in the  
40 box, no gift is made. If the person mentioned does not

1 survive me, or the charity designated does not accept the  
 2 gift, then no gift is made. No death tax shall be paid from  
 3 this gift.

<p>4</p> <p>5</p> <p>6 FULL NAME OF          7 PERSON OR CHARITY          8 TO RECEIVE CASH          9 GIFT (Name only one.          Please print.).</p>	<p>AMOUNT OF GIFT          \$ _____</p> <p>AMOUNT WRITTEN          OUT:          _____ Dollars</p> <p>_____          Signature of Testator</p>
<p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p>	

19

20 2.3. ALL OTHER ASSETS (MY "RESIDUARY  
 21 ESTATE"). I adopt only one Property Disposition Clause  
 22 in this paragraph 2.3 by writing my signature in the box  
 23 next to the title of the Property Disposition Clause I wish  
 24 to adopt. I sign in only one box. I write the words "not  
 25 used" in the remaining boxes. If I sign in more than one  
 26 box or if I fail to sign in any box, the property will be  
 27 distributed as if I did not make a will.

1  
2 PROPERTY DISPOSITION CLAUSES (Select one.)  
3

4 (a) TO MY SPOUSE IF  
5 LIVING; IF NOT LIV-  
6 ING, THEN IN ONE  
7 TRUST TO PROVIDE  
8 FOR THE SUPPORT  
9 AND EDUCATION  
10 OF MY CHILDREN  
11 AND THE DE-  
12 SCENDANTS OF  
13 ANY DECEASED  
14 CHILD UNTIL I  
15 HAVE NO LIVING  
16 CHILD UNDER 21  
17 YEARS OF AGE. \_\_\_\_\_

18  
19  
20 (b) TO MY CHILDREN  
21 AND THE DE-  
22 SCENDANTS OF  
23 ANY DECEASED  
24 CHILD IN ONE  
25 TRUST TO PRO-  
26 VIDE FOR THEIR  
27 SUPPORT AND ED-  
28 UCATION UNTIL I  
29 HAVE NO LIVING  
30 CHILD UNDER 21  
31 YEARS OF AGE. I  
32 LEAVE NOTHING  
33 TO MY SPOUSE, *IF*  
34 *LIVING.* \_\_\_\_\_

35  
36  
37 Article 3. Nominations of Executor, Trustee, and  
38 Guardian

39  
40 3.1. EXECUTOR (Name at least one.)

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

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

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

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

22  
23 3.2. TRUSTEE (Name at least one.)

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

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

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

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

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

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

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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 (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.

1 I sign my name to this California Statutory Will }  
 2 With Trust on \_\_\_\_\_ at \_\_\_\_\_ }  
 3 Date City State

4  
 5 \_\_\_\_\_  
 6 Signature of Testator  
 7

8  
 9 **STATEMENT OF WITNESSES** (You must use two  
 10 adult witnesses, and three witnesses would be  
 11 preferable.)  
 12

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

21  
 22 Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
 23 Print Name  
 24 Here: \_\_\_\_\_

25  
 26 Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
 27 Print Name  
 28 Here: \_\_\_\_\_

29  
 30 Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
 31 Print Name  
 32 Here: \_\_\_\_\_

33  
 34 **56.9.** The following is the full text of paragraph 2.1 of  
 35 both California Statutory Will Forms appearing in this  
 36 chapter : :

37 If my spouse survives me, I give my spouse all my  
 38 books, jewelry, clothing, personal automobiles, household  
 39 furnishings and effects, and other tangible articles of a  
 40 household or personal use. If my spouse does not survive  
 41 me, the executor shall distribute those items among my

1 children who survive me, and shall distribute those items  
2 in as nearly equal shares as feasible in the executor's  
3 discretion. If none of my children survive me, the items  
4 described in this paragraph shall become part of the  
5 residuary estate.

6 56.10. The following are the full texts of the property  
7 disposition clauses referred to in paragraph 2.3 of the  
8 California Statutory Will Form set forth in Section 56.7 :

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

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

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

19 I give all my residuary estate to my descendants who  
20 survive me. I leave nothing to my spouse, even if my  
21 spouse survives me.

22 (c) TO BE DISTRIBUTED AS IF I DID NOT HAVE  
23 A WILL:

24 The executor shall distribute my residuary estate to my  
25 heirs at law, their identities and respective shares to be  
26 determined according to the laws of the State of  
27 California in effect on the date of my death and relating  
28 to the succession of separate property not acquired from  
29 a parent, grandparent, or predeceased spouse.

30 56.11. The following are the full texts of the property  
31 disposition clauses referred to in paragraph 2.3 of the  
32 California Statutory Will With Trust Form set forth in  
33 Section 56.8:

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

40 (1) If my spouse survives me, then I give all my

1 residuary estate to my spouse.

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

6 (A) As long as any child of mine under 21 years of age  
7 is living, the trustee shall distribute from time to time to  
8 or for the benefit of any one or more of my children and  
9 the descendants of any deceased child (the beneficiaries)  
10 of any age as much, or all, of the (i) principal or (ii) net  
11 income of the trust, or (iii) both, as the trustee deems  
12 necessary for their health, support, maintenance, and  
13 education of my descendants. Any undistributed income  
14 shall be accumulated and added to the principal.  
15 "Education" includes, but is not limited to, college,  
16 graduate, postgraduate, and vocational studies, and  
17 reasonably related living expenses. Consistent with the  
18 trustee's fiduciary duties, the trustee may distribute trust  
19 income or principal in equal or unequal shares and to any  
20 one or more of the beneficiaries to the exclusion of other  
21 beneficiaries. In deciding on distributions, the trustee  
22 may take into account, so far as known to the trustee, the  
23 beneficiaries' other income, outside resources, or sources  
24 of support, including the capacity for gainful  
25 employment of a beneficiary who has completed his or  
26 her education.

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

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

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

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

3 (A) As long as any child of mine under 21 years of age  
4 is living, the trustee shall distribute from time to time to  
5 or for the benefit of any one or more of my children and  
6 the descendants of any deceased child (the beneficiaries)  
7 of any age as much or all, of the (i) principal, or (ii) net  
8 income of the trust, or (iii) both as the trustee deems  
9 necessary for their health, support, maintenance, and  
10 education. Any undistributed income shall be  
11 accumulated and added to the principal. "Education"  
12 includes, but is not limited to, college, graduate,  
13 postgraduate, and vocational studies, and reasonably  
14 related living expenses. Consistent with the trustee's  
15 fiduciary duties, the trustee may distribute trust income  
16 or principal in equal or unequal shares and to any one or  
17 more of the beneficiaries to the exclusion of other  
18 beneficiaries. In deciding on distributions, the trustee  
19 may take into account, so far as known to the trustee, the  
20 beneficiaries' other income, outside resources, or sources  
21 of support, including the capacity for gainful  
22 employment of a beneficiary who has completed his or  
23 her education.

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

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

32 (3) I leave nothing to my spouse, *even if my spouse*  
33 *survives me.*

34 56.12. The mandatory clauses of all California  
35 statutory wills are as follows:

36 (a) **INTESTATE DISPOSITION.** If the testator has  
37 not made an effective disposition of the residuary estate,  
38 the executor shall distribute it to the testator's heirs at  
39 law, their identities and respective shares to be  
40 determined according to the laws of the State of

1 California in effect on the date of the testator's death and  
2 relating to the succession of separate property not  
3 acquired from a parent, grandparent, or predeceased  
4 spouse.

5 (b) POWERS OF EXECUTOR.

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

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

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

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

34 (c) POWERS OF GUARDIAN. A guardian of the  
35 person nominated in the California statutory will shall  
36 have the same authority with respect to the person of the  
37 ward as a parent having legal custody of a child would  
38 have. A guardian of the estate nominated in a California  
39 statutory will shall have all of the powers conferred by  
40 law. All powers granted to guardians in this paragraph

1 may be exercised without court authorization.

2 56.13. In addition to the mandatory clauses contained  
3 in Section 56.12, the California Statutory Will With Trust  
4 Form shall also incorporate the following mandatory  
5 clauses:

6 (a) **INEFFECTIVE DISPOSITION.** If, at the  
7 termination of any trust created in the California  
8 statutory will with trust, there is no effective disposition  
9 of the remaining trust assets, then the trustee shall  
10 distribute those assets to the testator's then living heirs at  
11 law, their identities and respective shares to be  
12 determined as though the testator had died on the date  
13 of the trust's termination and according to the laws of the  
14 State of California then in effect and relating to the  
15 succession of separate property not acquired from a  
16 parent, grandparent, or predeceased spouse.

17 (b) **POWERS OF TRUSTEE.** (1) In addition to any  
18 powers now or hereafter conferred upon trustees by law,  
19 the trustee shall have all the powers listed in Section  
20 1120.2. The trustee may exercise those powers without  
21 court authorization.

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

24 (A) Hire and pay from the trust the fees of investment  
25 advisors, accountants, tax advisors, agents, attorneys, and  
26 other assistants for the administration of the trust and for  
27 the management of any trust asset and for any litigation  
28 affecting the trust.

29 (B) On any distribution of assets from the trust, the  
30 trustee shall have the discretion to partition, allot, and  
31 distribute the assets (i) in kind, including undivided  
32 interests in an asset or in any part of it, or (ii) partly in  
33 cash and partly in kind, or (iii) entirely in cash. If a  
34 distribution is being made to more than one beneficiary,  
35 the trustee shall have the discretion to distribute assets  
36 among them on a pro rata or nonpro rata basis, with the  
37 assets valued as of the date of distribution.

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

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

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

7 ~~(1) A trustee or successor trustee when serving under~~  
8 ~~this will, may sign and file in the court in which the~~  
9 ~~California statutory will is probated, a document naming~~  
10 ~~one or more persons, other than a current income~~  
11 ~~beneficiary of the trust, in the order of preference and~~  
12 ~~succession listed in that document, as successor trustees~~  
13 ~~to fill any unprovided for vacancy.~~

14 ~~(2)~~

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

21 ~~(3)~~

22 (2) Any trustee serving hereunder shall be entitled to  
23 reasonable compensation for ordinary and extraordinary  
24 services, and for all services in connection with the  
25 complete or partial termination of any trust created by  
26 this will.

27 ~~(4)~~

28 (3) All persons who have any interest in a trust under  
29 a California statutory will with trust are bound by all  
30 discretionary determinations the trustee makes in good  
31 faith under the authority granted in the California  
32 statutory will with trust.

33 56.14. Except as specifically provided in other parts of  
34 this chapter, a California statutory will shall include only  
35 the texts of the property disposition clauses and the  
36 mandatory clauses as they exist on the day the California  
37 statutory will is executed.

38 SEC. 2. Except as specifically provided, nothing in  
39 this bill is intended to change the substantive law of  
40 California.