#L-3049 jd374
12/18/90

Memorandum 91-2

Subject: Study L-3049 - California Statutory Will

At the November meeting, the Commission had a wide ranging discussion of various matters in connection with the revision of the California Statutory Will prepared by a Subcommittee of the Estate Planning, Trust and Probate Law Section. It is the purpose of this memorandum to present the key policy issues in connection with the Subcommittee redraft for review and determination by the Commission.

SHOULD THE COMMISSION UNDERTAKE TO PREPARE A REVISED CALIFORNIA STATUTORY WILL FORM?

The Subcommittee has prepared a draft of a revised California Statutory Will form. At the last meeting, the Commission's staff presented a memorandum which raised various policy issues in connection with the revised form prepared by the Subcommittee and set out a staff redraft the existing statutory provisions to conform to the revised form recommended by the staff.

It was apparent at the meeting that the Subcommittee is satisfied with its revised form and would make revisions in it only with reluctance. The question is whether the contribution the Commission could make to this project justifies the expenditure of the time and resources that would be required.

This is an important project. A great number of statutory will forms are used. It is reported that many--perhaps half--of the persons who use the existing form are unable to produce a completed form that will be admitted to probate. This is the reason that the Subcommittee is working on preparing a revised form.

If the Commission is involved in this project, the staff would anticipate that we would use the same procedures we use on our other recommendations. We will review the policy issues, make decisions on

those issues, and prepare a tentative draft of our recommendation. The tentative draft will be distributed to our probate law consultants and the persons on our mailing list who have indicated a desire to review tentative recommendations relating to probate law. The Commission will review the comments we receive, make any needed revisions, and submit its recommendation to the Governor and the Legislature. The time required to go through this process will mean that legislation to effectuate our recommendation could not be considered until the 1992 legislative session. (On an important project like this, the staff believes that it would be a serious mistake not to solicit comments on our tentative recommendation.) On the other hand, the Subcommittee apparently has substantially completed its work, and it is likely that the Subcommittee proposal could be presented by the Subcommittee at the 1991 legislative session. The restrictions on the State Bar in presenting legislation appear to have been interpreted to permit the State Bar to sponsor the Subcommittee proposal at the 1991 session.

The Commission will recall that the material considered at the November meeting indicated that the staff has serious concerns about some of the policy issues presented by the Subcommittee draft of the new statutory will form. The staff believes that the Commission could make a significant contribution in developing an outstanding statutory will form. The question is: Does the Commission wish to devote its staff and Commission time in an attempt to work out with the Subcommittee a mutually acceptable form? If the Commission decides that it wishes to continue work on this project, this memorandum presents various policy issues for consideration and determination by the Commission. If the Commission decides that it wishes to abandon work on this project, the Subcommittee can review the staff discussion of the policy issues and make the changes (if any) it considers desirable in its statutory form.

QUESTIONS AND ANSWERS PORTION OF FORM

Attached as Exhibit 2 is a revised draft of the Questions and Answers that will accompany the California Statutory Will Form. Various revisions have been made, and the material may need additional revision as a result of Commission decisions to be made at the January meeting. In the Tentative Recommendation we will place these Questions and Answers before the text of the Statutory Will form.

We note for your special attention two significant revisions. The staff has added Question 8 to the Questions and Answers. The State Bar Subcommittee representative suggested that the testator should be informed of the 120 hour survival requirement and of the effect of the anti-lapse statute. The answer to this question provides this information.

Several writers expressed concern about the definition of a trust in the previous version of the Questions and Answers. The staff has revised this material in Question 18.

THE REVISED FORM PREPARED BY THE SUBCOMMITTEE

At the last meeting, the Commission briefly reviewed a revised Statutory Will form prepared by the staff to implement the staff suggested revisions. However, some Commissioners expressed a desire to review the redrafted form prepared by the Subcommittee. To deal with this concern, we have attached as Exhibit 1 to this memorandum the redrafted form prepared by the Subcommittee.

PARAGRAPH 2. IDENTITY OF MY FAMILY

The redrafted Subcommittee form (Exhibit 1) includes a new paragraph recommended by the Subcommittee. Paragraph 2 of the Subcommittee form requires a listing of "my spouse" and "my children now living."

Purpose of New Provision

The staff is advised that the Subcommittee included the new provision requiring a listing of family members in an attempt to foreclose claims by children who were included in the listing but not given anything by the will. This listing is required to make clear that the testator was aware of the living child at the time the will is executed. "If at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead or is unaware of the birth of the child, the child shall receive a share in the estate equal in value to that which the child would have received if the testator had died intestate." Prob. Code § 6572.

However, there is nothing in the form that indicates the reason why a listing of family members is required. There is no warning that failure to list a living child might lead to a will contest by the child not listed on the ground that the omission is evidence that the testator believed the child to be dead (even though the testator actually was aware that that child was living at the time the will was executed).

New Provision May Create Uncertainty

The staff is also concerned that the new provision will create uncertainty as to who takes as a child under the statutory will. Section 6408 provides detailed rules for determining who is considered a child for the purpose of the statutory will. These rules deal with the situation of the adopted child, the stepchild, and the foster child. The testator will not know these rules, and the failure to list a person considered under Section 6408 to be a child is bound to result in a will contest unless the child is given something in the will.

The staff also fears that the new provision will cause some testators mistakenly to construe the class gift to "children" provisions of the Statutory Will to include only living children at the time the will is executed, since only "living" children must be listed. This construction of the class gift provisions would exclude the issue of children who died before the will was executed, a construction that is not a correct construction of the class gift provision of the statutory will.

There are other possibilities of confusion created by the listing of "living" children. Suppose the testator interprets the new provision to mean that the testator should list only the children he or she wants to take property under the will. In other words, the testator will omit from the listing the names of the living children the testator does not want to take a share of the estate. Is this incomplete listing a definition of "children" for the purpose of the class gift disposition clause of the statutory will? In other words, is the child not listed excluded from the class "children"? If so, this invites a will contest.

Suppose the testator includes in the list of "living children" an unadopted stepchild or foster child that the testator regards as one of his or her children, even though the listed "child" does not satisfy the statutory requirements in order to be considered a "child"? Is the listed person considered a "child" for the purposes of the class gift disposition clause of the statutory will?" It is not an easy matter to determine who is a "child" when the testator has stepchildren or foster children. A careful study of the statute--Probate Code Section 6408--is required.

Are we sure that the testator will list a child born out of marriage in the listing of living children?

Staff Recommendation For Dealing with Problem of Disinherited Child

The staff does not believe that Probate Code Section 6572 (statutory share of omitted child living at time will executed who testator believes to be dead or is unaware of the birth of the child) creates a serious problem of a will contest if a living child of the testator is omitted from the will. The person contesting the will must prove that the testator believed the child to be dead or was unaware of the birth of the child. The Commission's revision of the Probate Code greatly reduced the opportunity of an omitted child to contest the will. Former Probate Code Section 90 protected any omitted child in existence when the will was made, not just those children who the testator believed were dead or was unaware had been born. The need for the Subcommittee provision would be much greater if the rule of former Probate Code Section 90 had been continued in the new Probate Code.

At the same time, as discussed above, the requirement that "living children" be listed in the statutory will may result in problems in interpreting the class gift provision in the statutory will and may create confusion in the mind of the testator as to the effect the will will have. The staff is also concerned that the new provision recommended by the Subcommittee may create problems where the testator fails accurately to list all the testator's "living children." However, this would cause no problem if the "living child" not listed were given a gift in the will. But the statutory will form makes it difficult for the testator to give the omitted child something in the

will. This is because the statutory will form does not permit the testator to give a gift of a particular item of personal property. The staff would be much less concerned about the Subcommittee's new provision if the statutory will form permitted a specific gift of a particular item of personal property, because if the testator gave a gift to the "living child" not listed, that would make clear that the child was not an omitted child within the meaning of Probate Code Section 6572.

PARAGRAPH 3. ITEMS OF PERSONAL PROPERTY

Paragraph 3 of the Subcommittee draft reads:

3. Items of Personal Property. I give all my furniture, furnishings, household items, clothing, jewelry, automobiles and personal items as follows (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX):

a. Choice One: If I am now married, to my present spouse, if living; otherwise equally among my children (with any deceased child's share passing to the deceased child's descendants). _____ |_____|

b. Choice Two: Nothing to my spouse (if I am married); all equally among my children (any deceased child's share shall pass to that child's descendants). _____ |_____|

c. Choice Three: All to the following person: _____ _____ |_____|

d. Choice Four: Equally among the following persons who survive me (INSERT EACH PERSON'S NAME):
Names of persons: _____
_____
_____ _____
_____ |_____|

There are a number of technical problems with the Subcommittee's provision:

Choice One

There are several problems with Choice One of the Subcommittee draft:

(1) Choice One uses the language: "If I am now married, to my present spouse, if living." Contrast this language with the language

used in the existing statute: "To my spouse, if living." The staff would substitute for the Subcommittee language, the following: "To my spouse if my spouse survives me." We believe that this language is clearer.

(2) Choice One uses the language "otherwise equally among my children (with any deceased child's share passing to the deceased child's descendants)." Contrast the Subcommittee language with the language used in the existing statute: "To my spouse if living; if not living then to my children and the descendants of any deceased child." The problem with the Subcommittee language is that it conveys the impression that the property is divided at the level of children, even though all children are dead and the distribution is to be made to descendants of the deceased children. This is not the distribution rule under the Statutory Will statute; distribution is made at the first generation having a living member. In other words, if all the children are dead, the grandchildren take equal shares, not a share based on the share their parent would have taken if their parent had survived the testator.

Section 6205 of the existing statute defines "descendants" to mean children, grandchildren, and their lineal descendants of all generations.

Section 6209 of the existing statute provides:

> 6209. 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.

When the Commission studied the manner of distribution, the Commission reviewed empirical studies that demonstrate that the distribution rule stated in Section 6209 is most likely to reflect the desires of the average person. The staff believes it would be a serious mistake to change the distribution scheme of the existing California Statutory Will statute. Accordingly, we would retain the substance of the existing statute by substituting "otherwise to my descendants (my children and the descendants of deceased children)" for

the phrase "otherwise equally among my children (with any deceased child's share passing to the deceased child's descendants)."

Accordingly, the staff recommends that Choice One read: "To my spouse if my spouse survives me; otherwise to my descendants (my children and the descendants of deceased children)."

Choice Two

Based on the staff analysis of Choice One (above), the staff would revise Choice Two to read:

> b. Choice Two: To my descendants (my children and the descendants of deceased children); nothing to my spouse if I am married.

Choice Three

The staff has no problem with Choice Three. However, note that under Choice Three of the Subcommittee draft, if the named beneficiary does not survive the testator, the anti-lapse statute will determine whether the descendants of the deceased beneficiary take the share given the beneficiary. Under Probate Code Section 6147, the descendants of the deceased beneficiary take if the beneficiary is a relative of the testator or the spouse of the testator. Question 8 of the revised Questions and Answers would give the person using the Statutory Will this information.

Choice Four

Unlike Choice Three, Choice Four requires survival. Note also that the comparable provision governing the distribution of the balance of the estate adds additional language (underscored) to the provision: "Equally among the following persons who survive me (any deceased person's share shall be added equally among the surviving person's shares)." The staff doubts that the average person can understand the underscored language.

The staff strongly recommends that Choice Four be revised to delete the survival requirement. The Commission drafted the anti-lapse statute in the form it is drafted because it was generally agreed that the anti-lapse statute reflects the view of the average person if a named beneficiary of a will dies before the testator. For example, if the testator names two children to take under Choice Four, and one

child dies before the testator, the average person would want the children of the deceased child to take in place of their parent; the average testator would not want the surviving child to take everything. If the testator divides the property among two brothers and one sister, and one brother dies before the testator, the average testator would want the children of the deceased brother to take the deceased brother's share.

The Commission and others devoted a great deal of time and thought to developing the anti-lapse rule so that it would be consistent with the likely intent of the testator. The staff believes that it would be a serious mistake to word the Statutory Will in a manner that will make the anti-lapse statute not applicable. Accordingly we urge the Commission to delete the words "who survive me" from Choice Four, so that the anti-lapse statute will determine whether the descendants of the named beneficiary take the lapsed gift.

STAFF RECOMMENDED PROVISION — GIFTS OF SPECIFIC PERSONAL PROPERTY

All the other states that have statutory wills permit the testator to make a specific gift of a particular item of personal property. California was the first state with a statutory will form. The other states made this modification when they revised the California form for use in their state. It is not uncommon for a testator to desire to leave a particular item of personal property to one of his or her children or to a friend. The statutory will form should recognize this desire. Professor Beyer did not find that the specific gift provision in other states has created any problems.

Assume that the testator has three children. One is a professional who has a large income; the other two are needy. The testator is likely to make a choice to give the estate to the two children who are needy. The testator does not wish to give a cash gift (as permitted by the revised form prepared by the Subcommittee) to the wealthy child, because the child does not need cash. But the testator would like to give something to the wealthy child, but the revised Subcommittee form does not permit the testator to give a particular item of personal property to the wealthy child, such as "my grandfather's watch," "my gold ring," "my tools," "my coin collection," or "my stamp collection."

At the last meeting, the staff presented a form which would have permitted the testator to give a particular item of property (real or personal) to one child and give the balance of the estate to the other two children. The State Bar Subcommittee opposed this provision. Several reasons were given for the opposition. First, the specific gift might be sold or no longer be in existence when the testator dies. But this is a problem whether the will is a statutory will or an attorney drawn will, and the Probate Code contains provisions providing rules to govern the various situations that might occur. Second, the description of the gift may be inadequate. This may be a problem in some cases, but the staff believes that in the usual case there will be little doubt about what the testator gave to the specific devisee. Third, concern was expressed that the provision that no death taxes be paid from the gift would operate unfairly if the gift were a valuable one. This is a good point, and the staff would delete the death tax provision, thereby leaving this matter to the statutory provisions governing proration of taxes. The State Bar representative also expressed concern that there might be encumbrances on the property, such as a loan on a house, and the testator would not know whether the property given was to be taken subject to the loan or whether the estate would pay off the loan. The Probate Code contains provisions dealing with this, based on what an ordinary person would expect--that is, that the property is taken subject to the loan unless the will otherwise provides.

On balance, the staff believes that the need to provide a form that will meet the testator's needs outweighs the reasons given by the State Bar representative in opposing the provision.

At the last meeting, the Commission reviewed a staff redraft of a Statutory Will form that would have permitted specific gifts of real and personal property. Some suggestions were made by individual Commissioners for revision of the form to provide more space for a description of the property, but ultimately a motion was adopted to restrict the specific gifts provision to specific cash gifts and to a specific gift of the testator's personal residence at the time of the testator's death.

Attached as Exhibit 3 is a provision (revised in light of the suggestions made at the last meeting) that would permit a specific devise of cash or personal property (but not real estate). The staff recommends that this provision be added to the statutory will form, thereby conforming the scheme of our statute to that used in all of the other states that have a statutory will form.

PARAGRAPH 4. CASH GIFTS

Paragraph 4 of the Subcommittee draft reads:

4. Cash Gifts. I make the following cash gifts in the amounts stated, and I sign my name in the box after each gift. If I don't sign in the box, I do not make a gift. If a named person does not survive me, the gift to that person is void. No death tax shall be paid from these gifts. SIGN AFTER EACH GIFT.

Name of Person or Charity	Amount of Cash Gift	You sign here

The staff would substitute for this paragraph, the paragraph set out on Exhibit 3 attached which permits not only gifts of cash but also gifts of personal property. If the Subcommittee paragraph is to be retained, we suggest the following revisions in the paragraph:

(1) We would add a provision making clear that the paragraph is "Optional."

(2) We would delete the survival requirement, for the reasons given above in the discussion of the anti-lapse statute.

(3) We would delete the provision that no death tax shall be paid from the gifts. A gift of cash could be of a substantial portion of the estate. It would be unfair to require the death tax to be paid only from the balance of the estate. We doubt that the testator using the form will understand the effect of the death tax provision. Upon Commission recommendation, a general death tax proration statute has been enacted as a part of the Probate Code, and the staff believes that the statute should apply to the Statutory Will. Moreover, the death tax does not apply unless the portion of the estate passing to persons other than the surviving spouse exceeds $600,000, so it will be a rare case where proration of death taxes will be required.

NEW PROVISION ADOPTED BY COMMISSION AT LAST MEETING

At its November meeting, the Commission adopted a motion to add the substance of the following to the Statutory Will form:

X. Personal Residence. (Optional. Use only if you want to give your personal residence to a different person or persons than you give your other property. SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX.) I give my personal residence at the time of my death as follows:

(a) Choice One. To my spouse if my spouse survives me; otherwise to my descendants (my children and the descendants of deceased children) ☐

(b) Choice Two. To my descendants (my children and the descendants of deceased children); nothing to my spouse if I am married. ☐

(a) Choice Three: To the following person: ☐

_____

(b) Choice Four: Equally among the following persons: (INSERT EACH PERSON'S NAME) ☐

_____

_____

_____

_____

This provision will supplement the provision for specific gifts of cash and other personal property recommended by the staff. Note that we do not provide for specific gifts of real property other than the personal residence of the testator at the time of death.

PARAGRAPH 5. BALANCE OF MY ASSETS

Paragraph 5 of the Subcommittee draft reads:

5. Balance of My Assets. I give the balance of my other assets as provided below (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE

BOX). If I sign in more than one box or if I don't sign in any box, the court will distribute my assets as if I did not make a Will.

a. Choice One: If I am now married, to my present spouse, if living; otherwise equally among my children (with any deceased child's share passing to the deceased child's descendants). |_____|

b. Choice Two: Nothing to my spouse (if I am married); all equally among my children (any deceased child's share shall pass to that child's descendants). |_____|

c. Choice Three: Equally among the following persons who survive me (any deceased person's share shall be added equally among the surviving person's shares):
Names of persons: _____
_____
_____
_____ |_____|

d. Choice Four: To those persons designated under California law as if I did not have a Will. |_____|

The staff recommends that Choice One, Choice Two, and Choice Three be revised to conform to the staff suggestions concerning paragraph 3 of the Subcommittee draft.

The staff questions whether Choice Four of the Subcommittee draft should be retained. Note that the introductory language for this paragraph of the Subcommittee draft includes a statement, which the substance of which the staff would retain: "If I sign in more than one box or if I don't sign in any box, the court will distribute these assets as if I did not make a will."

ORDER OF ARRANGEMENT IN STATUTORY FORM OF PROPERTY DISPOSITION PROVISIONS

A will ordinarily sets out the specific devises and then makes a disposition of the balance of the testator's property. However, in the Statutory Will, the specific devises are optional provisions. A testator should use the specific devises only if the testator wants to make a different disposition of property under an optional provision than the disposition the testator makes of the balance of the testator's property. The staff believes that the testator will be able to make a more intelligent choice of the optional, specific gift

provisions if the testator first specifies the disposition of the balance of the estate. We have prepared a draft of the reordered disposition provisions for Commission consideration. See Exhibit 4 attached.

PARAGRAPH 6. SPECIAL PROVISIONS FOR PERSONS UNDER 25

Paragraph 6 of the Subcommittee draft reads:

6. Special Provisions for Persons Under 25. If a portion of my estate passes to a person under age 25, that portion shall be held as follows. Choice One applies if I don't sign either box. (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX):

a. Choice One: Outright to the person (and if the person is under age 18, to the Guardian of person's Property designated in paragraph 7 below) |_____|

b. Choice Two: To the persons named below in the order designated as custodian for the person until age ____ (insert any age between 18 and 25; if you do not select an age, age 21 will apply) under the California Uniform Transfers to Minors Act (and if I don't name a custodian, the court may designate one):

Name of First Custodian To Serve
Name of Second Custodian To Serve
Name of Third Custodian To Serve

|_____|

This is an exceedingly complex provision. Even assuming that the user of the statutory form knows what the California Uniform Transfers to Minors Act is, we doubt that the person could understand the provision and fill in the spaces correctly.

Moreover, there are several technical problems with the Subcommittee provision. These are noted in the following discussion.

Choice One requires the Executor to use a guardianship of the property if the beneficiary is under age 18. This deprives the executor of the discretion now given by the mandatory clause set out in Section 6245 of the existing statute. Section 6245(b)(2) provides in part:

> (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 or the Uniform Transfers to Minors Act of any state.

It will often be the case that the amount given to a minor beneficiary is so small that it would be too costly to establish a guardianship. Under the provision set out above, the executor will either elect to pay the amount over to the parents of the child to hold in trust for the child or to a custodian under the Uniform Transfers to Minors Act.

The existing provision of the statute set out above provides needed flexibility and the staff strongly urges the Commission to retain this provision.

The policy issue is: "Should the statute give to the testator the ability to require that property passing to a beneficiary under age 25 be transferred to a custodian under the California Uniform Transfers to Minors Act or should this discretion be given to the executor?

The staff's proposal at the last meeting was to give this discretion to the executor. To deal with concerns expressed at the last meeting, we now propose to amend Section 6245(b)(2) to read (additions shown in underscore):

> (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 or the Uniform Transfers to Minors Act of any state.
>
> The executor may distribute estate assets otherwise distributable to a beneficiary under age 25 to a custodian under the California Uniform transfers to Minors Act, Part 9 (commencing with Section 3900). If the executor elects to make such a transfer, the executor shall provide, in making the transfer, that the transfer of the custodial property to the beneficiary is to be delayed until the beneficiary attains the age of 25 years.
>
> If the testator has nominated a guardian of the property of the beneficiary for whom estate assets are to be transferred to a custodian, the guardian so nominated shall serve as the custodian if willing and able to do so.
>
> The executor is free of liability and is discharged from any further accountability for distributing assets in compliance with this paragraph.

Nevertheless, the Subcommittee strongly believes that the testator (rather than the executor) should make the decision on how long beyond

age 18 the property should be retained in a custodianship. For this reason, the Commission may wish to adopt the following provision as a substitute for paragraph 6 (Special Provisions for Persons Under 25) (set out above) of the Subcommittee draft:

> 6. SPECIAL PROVISION FOR BENEFICIARY UNDER AGE 25. (Optional. Unless you otherwise provide, assets that go under your will to a beneficiary who is 18 or older will be paid or delivered outright to the beneficiary. However, you can provide those assets will instead be held in a custodianship for a beneficiary between the ages of 18 and 25 until the beneficiary reaches the age your indicate below. If you want to do this, complete this paragraph.) If any portion of my estate passes to a beneficiary between the age of 18 and 25 years of age, I desire that that portion be held by a custodian until the beneficiary reaches the following age:
>
> |___| (Insert any age between 18 and 25)

This provision is much easier to understand than the provision contained in the Subcommittee draft. If this provision is adopted, the statute (not the form itself) should include the provision that "If the testator has nominated a guardian of the property of the beneficiary for whom estate assets are to be transferred to a custodian, the guardian so nominated shall serve as the custodian if willing and able to do so."

The statement in the Subcommittee provision that the court will select the custodian if the testator does not designate one is not correct in view of Section 3905(c).

PARAGRAPH 7. GUARDIAN

Paragraph 7 of the Subcommittee draft reads:

7. Guardian. If I have a child under age 18 and the child does not have a living parent at my death, I nominate the following persons to serve in the order designated as guardian of each of my children who requires one (a person can serve as guardian of the Person, or of the Property, or of both. A corporation can serve only as guardian of the Property):

Name of First Guardian of the Person	Name of First Guardian of the Property
Name of Second Guardian of the Person	Name of Second Guardian of the Property
Name of Third Guardian of the Person	Name of Third Guardian of the Property

At the last meeting, one Commissioner questioned whether the person using the statutory will form will understand this provision. The use of the phrase "to serve in the order designated" and the terminology "First Guardian of the Person" were thought to be confusing.

The Commission may prefer something drawn from the introductory portion of the existing form which provides considerably more information concerning guardians and the meaning of "First Guardian," "Second Guardian," and "Third Guardian":

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

To deal with the concern expressed at the last meeting, the staff recommends that the introductory portion of paragraph 7 of the Subcommittee draft be revised along the lines of the existing statute to read:

7. 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. A corporation can serve only as a guardian of the property.)

If a guardian is needed for any child of mine, then I nominate the individual named below as First Choice for Guardian of the Person to serve as guardian of the person of that child, and I nominate the individual or corporation named below as First Choice for Guardian of the Property to serve as guardian of the property of that child. If the individual or corporation named as First Choice does not serve, then I nominate the others to serve in the order I list them in the other boxes.

Name of First Choice for Guardian of the Person	Name of First Choice for Guardian of the Property
Name of Second Choice for Guardian of the Person	Name of Second Choice for Guardian of the Property
Name of Third Choice for Guardian of the Person	Name of Third Choice for Guardian of the Property

PARAGRAPH 8. EXECUTOR

Paragraph 8 of the Subcommittee draft reads:

8. Executor. I nominate the following persons or corporations to serve in the order designated as executor (YOU MAY NAME ONE, TWO OR THREE PERSONS OR CORPORATIONS TO SERVE CONSECUTIVELY; IF YOU DON'T NAME ANY, THE COURT WILL APPOINT ONE FOR YOU):

Name of First Executor To Serve
Name of Second Executor To Serve
Name of Third Executor To Serve

The staff would modify this provision along the lines suggested above for modifying the guardian provision. Specifically, we would revise the provision to read:

8. Executor. I nominate the individual or corporation named below as First Choice for Executor to serve as executor. If the individual or corporation named as First Choice does not serve, then I nominate the others to serve in the order I list them in the other boxes. (If you don't name an executor, the court will appoint one for you.)

Name of First Choice for Executor

Name of Second Choice for Executor

Name of Third Choice for Executor

PARAGRAPH 9. BOND

Paragraph 9 of the Subcommittee draft reads:

9. Bond. My signature in this box means a bond is not required for any person named as executor or guardian. A bond must be required if I do not sign in this box:

No bond shall be required. |_____|

The staff would add to this provision the following: "(Your estate must pay for the bond if one is required.)" The staff believes that it is important that the testator be aware that the estate pays for the bond. This is the only change we propose in this paragraph of the Subcommittee draft. The Subcommittee draft, with this addition, is a clear improvement over the provision of existing law, which is set out below:

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

SIGNATURE AND ATTESTATION

The Subcommittee draft further provides:

(NOTICE: YOU MUST SIGN THIS WILL IN THE PRESENCE OF TWO (2) WITNESSES. THE WITNESSES MUST SIGN THEIR NAMES IN YOUR PRESENCE AND IN EACH OTHER'S PRESENCE. YOU MUST FIRST READ TO THEM THE FOLLOWING TWO SENTENCES).

This is my Will. I ask the persons who sign below to be my witnesses. Signed on _____, at _____, California.

(date) (City)

_____

Signature of Maker of Will

(NOTICE TO WITNESSES: TWO (2) ADULTS MUST SIGN AS WITNESSES. EACH WITNESS MUST READ THE FOLLOWING CLAUSE BEFORE SIGNING. THE WITNESSES MUST NOT BE RELATED TO THE MAKER AND SHOULD NOT RECEIVE ASSETS UNDER THIS WILL).

Each of us declares under penalty of perjury under the laws of the State of California that the following is true and correct:

(i) on the date written below the maker of this Will declared to us that this instrument was the maker's Will and requested us to act as witnesses to it;

(ii) we understand this is the maker's Will;

(iii) the maker signed this Will in our presence, all of us being present at the same time;

(iv) we now, at the maker's request, and in the maker's and each other's presence, sign below as witnesses;

(v) we believe the maker is of sound mind and memory;

(vi) we believe that this Will was not procured by duress, menace, fraud or undue influence;

(vii) the maker is age 18 or older; and

(viii) each of us is now age 18 or older, is a competent witness, and resides at the address set forth after his or her name.

Dated: _____.

Signature |_____| Address: _____

Print Name Here: _____ _____

Signature |_____| Residence Address: _____
Print Name Here: _____ _____

AT LEAST TWO WITNESSES MUST SIGN
A NOTARY IS NOT REQUIRED OR SUFFICIENT

The only change the staff would make in the Subcommittee draft is to delete the phrase in the instructions "THE WITNESSES MUST NOT BE RELATED TO THE MAKER." This will leave the sentence reading: "The WITNESSES MUST NOT RECEIVE ASSETS UNDER THIS WILL." The language to be deleted does not reflect existing law.

OTHER SIGNIFICANT CHANGES IN EXISTING LAW

The staff has prepared two other significant provisions to be included in the new statutory will statute. These were briefly discussed at the last meeting. There were no objections to the provisions.

TECHNICAL ERRORS IN EXECUTION OF FORM

There is reason to believe that statutory will forms are often improperly completed or are not properly executed. For example, Alameda County Court Commissioner Barbara J. Miller has stated that most statutory wills are not completed correctly. An article in the California Lawyer states that one half of the statutory wills offered for probate in Los Angeles County are rejected because they are improperly completed or not signed.

The staff suspects that the most common errors are the result of failure to follow the execution and witnessing requirements and the testator's making additions or deletions on the form that are not permitted by the statute. The staff has drafted provisions to deal with these situations.

Substantial compliance with execution requirements. The Committee recommended that a provision be included to permit the court to admit a

statutory will to probate if there is "substantial" compliance with the execution requirements.

The staff has drafted a provision to deal with this matter:

§ 6270 Validity of will where lack of full compliance with execution requirements

6270. Notwithstanding Section 6110, a document executed on a California Statutory Will form provided by Section 6275 is valid as a will if all of the following requirements are shown to be satisfied by clear and convincing evidence:

(a) The form is signed by the maker.

(b) The court is satisfied that the maker knew and approved of the contents of the will and intended it to have testamentary effect.

(c) The testamentary intent of the maker as reflected in the document is clear.

Comment. Section 6270 is a new provision. Since the great majority of statutory wills are executed by persons who do not have the advice of legal counsel, it is important that some provision be made to save statutory wills that otherwise would be invalid because of the failure to comply with the technical execution requirements. Under Section 6270, the court may find a California Statutory Will form to be a valid will even though the form was not executed with the formalities required by Section 6110. For example, the witnesses might not be "present at the same time" to witness the signing of the will, or one of the witnesses to the will may not be competent to be a witness (see Section 6112), or there may be only one or no witnesses to the will.

There were no objections at the last meeting to the concept of this provision. All persons who commented supported the concept. The State Bar Subcommittee states: "'Clear and convincing evidence' seems a proper standard for the court to admit a 'technically' defective Statutory Will."

Effect of additions or deletions on statutory form. The staff recommends the following provision:

§ 6269. Additions or deletions made on face of will

6269. Where an addition to or deletion from the California Statutory Will is made on the face of the California Statutory Will form, other than in accordance with the instructions, the addition or deletion shall be given effect only where that would effectuate the clear intent of the maker. If the intent is unclear, the court either may determine that the addition or deletion is ineffective and shall be disregarded or may determine that all or a portion

of the California Statutory Will is invalid, whichever is more likely to be consistent with the intent of the maker.

Comment. Section 6269 supersedes subdivision (b) of former Section 6225 (repealed California Statutory Will statute) which provided that an addition to or deletion from the California Statutory Will on the face of the California Statutory Will form, other than in accordance with the instructions, is ineffective and shall be disregarded. Section 6269 gives effect to the maker's testamentary intent where the intent is clear. Thus, the court will give effect to the will with the addition or deletion where that is consistent with the clear intent of the maker. Or the court may ignore the addition or deletion, or may find all or a portion of the will invalid, whichever is more likely to be consistent with the intent of the maker.

Beyer approved the staff suggested provision and there were no objections to it.

DRAFTING A REVISED STATUTORY WILL STATUTE

When the Commission has determined the policy issues presented in this Memorandum, the staff will be in a position to prepare a Tentative Recommendation for the Commission's February 21-22 meeting. After that meeting, the Tentative Recommendation (revised to reflect decisions at the February meeting) will be distributed to interested persons and organizations for review and comment. The comments we receive could be reviewed at the April, May, or June meeting, and the recommendation could be submitted to the 1992 legislative session.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Exhibit 1

CALIFORNIA STATUTORY WILL OF _____

1. Will. This is my Will. I revoke all prior Wills and codicils.

2. Identity of My Family. My spouse is _____
(INSERT SPOUSE'S NAME OR WRITE "NONE")

My children now living are (INSERT NAMES OR WRITE "NONE"):

_____ _____
_____ _____
_____ _____

3. Items of Personal Property. I give all my furniture, furnishings, household items, clothing, jewelry, automobiles and personal items as follows (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX):

a. Choice One: If I am now married, to my present spouse, if living; otherwise equally among my children (with any deceased child's share passing to the deceased child's descendants). _____

b. Choice Two: Nothing to my spouse (if I am married); all equally among my children (any deceased child's share shall pass to that child's descendants). _____

c. Choice Three: All to the following person: _____ _____

d. Choice Four: Equally among the following persons who survive me (INSERT EACH PERSON'S NAME):

Names of persons: _____
_____
_____
_____ _____

4. Cash Gifts. I make the following cash gifts in the amounts stated, and I sign my name in the box after each gift. If I don't sign in the box, I do not make a gift. If a named person does not survive me, the gift to that person is void. No death tax shall be paid from these gifts. SIGN AFTER EACH GIFT.

Name of Person or Charity	Amount of Cash Gift	You sign here
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. Balance of My Assets. I give the balance of my other assets as provided below (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX). If I sign in more than one box or if I don't sign in any box, the court will distribute my assets as if I did not make a Will.

a. Choice One: If I am now married, to my present spouse, if living; otherwise equally among my children (with any deceased child's share passing to the deceased child's descendants). _____

b. Choice Two: Nothing to my spouse (if I am married); all equally among my children (any deceased child's share shall pass to that child's descendants). _____

c. Choice Three: Equally among the following persons who survive me (any deceased person's share shall be added equally among the surviving persons' shares):
Names of persons: _____

_____

_____

_____ ☐

d. Choice Four: To those persons designated under California law as if I did not have a Will. ☐

6. Special Provisions for Persons Under 25. If a portion of my estate passes to a person under age 25, that portion shall be held as follows. Choice One applies if I don't sign either box. (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX):

a. Choice One: Outright to the person (and if the person is under age 18, to the Guardian of the person's Property designated in paragraph 7 below) ☐

b. Choice Two: To the persons named below in the order designated as custodian for the person until age ☐ (insert any age between 18 and 25; if you do not select an age, age 21 will apply) under the California Uniform Transfers to Minors Act (and if I don't name a custodian, the court may designate one):

Name of First Custodian To Serve
Name of Second Custodian To Serve
Name of Third Custodian To Serve

☐

7. Guardian. If I have a child under age 18 and the child does not have a living parent at my death, I nominate the following persons to serve in the order designated as guardian of each of my children who requires one (a person can serve as guardian of the Person, or of the Property, or of both. A corporation can serve only as guardian of the Property):

Name of First Guardian of the Person
Name of Second Guardian of the Person
Name of Third Guardian of the Person

Name of First Guardian of the Property
Name of Second Guardian of the Property
Name of Third Guardian of the Property

8. Executor. I nominate the following persons or corporations to serve in the order designated as executor (YOU MAY NAME ONE, TWO OR THREE PERSONS OR CORPORATIONS TO SERVE CONSECUTIVELY; IF YOU DON'T NAME ANY, THE COURT WILL APPOINT ONE FOR YOU):

Name of First Executor To Serve
Name of Second Executor To Serve
Name of Third Executor To Serve

9. Bond. My signature in this box means a bond is not required for any person named as executor or guardian. A bond must be required if I do not sign in this box:

No bond shall be required. [_____]

(NOTICE: YOU MUST SIGN THIS WILL IN THE PRESENCE OF TWO (2) WITNESSES. THE WITNESSES MUST SIGN THEIR NAMES IN YOUR PRESENCE AND IN EACH OTHER'S PRESENCE. YOU MUST FIRST READ TO THEM THE FOLLOWING TWO SENTENCES).

This is my Will. I ask the persons who sign below to be my witnesses. Signed on _____, at _____, California.
(date) (City)

[_____]
Signature of Maker of Will

(NOTICE TO WITNESSES: TWO (2) ADULTS MUST SIGN AS WITNESSES. EACH WITNESS MUST READ THE FOLLOWING CLAUSE BEFORE SIGNING. THE WITNESSES MUST NOT BE RELATED TO THE MAKER AND SHOULD NOT RECEIVE ASSETS UNDER THIS WILL).

Each of us declares under penalty of perjury under the laws of the State of California that the following is true and correct:

(i) on the date written below the maker of this Will declared to us that this instrument was the maker's Will and requested us to act as witnesses to it;

(ii) we understand this is the maker's Will;

(iii) the maker signed this Will in our presence, all of us being present at the same time;

(iv) we now, at the maker's request, and in the maker's and each other's presence, sign below as witnesses;

(v) we believe the maker is of sound mind and memory;

(vi) we believe that this Will was not procured by duress, menace, fraud or undue influence;

(vii) the maker is age 18 or older; and

(viii) each of us is now age 18 or older, is a competent witness, and resides at the address set forth after his or her name.

Dated: _____, 19__

Signature [_____] Residence Address: _____
Print Name Here: _____ _____

Signature [_____] Residence Address: _____
Print Name Here: _____ _____

AT LEAST TWO WITNESSES MUST SIGN
A NOTARY IS NOT REQUIRED OR SUFFICIENT

QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA STATUTORY WILL

The following information, in question and answer form, is **not** a part of the California Statutory Will. It is designed to help you understand about wills and to decide if this will meets your needs.

1. **What happens if I die without a will?** If you die without a will, what you own (your "assets") in your name alone will be divided among your spouse, children, or other relatives according to state law. The court will appoint a relative to collect and distribute your assets.

2. **What can a will do for me?** In a will you can designate who will receive your assets at your death. You can designate someone (called an "executor") to appear before the court, collect your assets, pay your debts and taxes, and distribute your assets as you specify. You can nominate a guardian to raise your children who are under age 18. You can nominate a guardian to manage assets for your children until they reach age 18, or you can provide that a custodian will manage the assets for your children until they reach age 25.

3. **Does a will avoid probate?** No. Whether or not you die with a will, assets in your name alone usually go through the court probate process. The court's first job is to determine if your will is valid.

4. **What is community property? Can I give away my share in my will?** If you are married and you or your spouse earned money during your marriage from work and wages, that money (and the assets bought with it) is community property. Your will can only give away your one-half of community property. Your will cannot give away your spouse's one-half of community property.

5. **Does my will give away all of my assets? Do all assets go through probate?** No. Money in a joint tenancy bank

account automatically belongs to the other named owner without probate. If your spouse or child is on the deed to your house as a joint tenant, the house automatically passes to him or her. Life insurance and retirement plan benefits may pass directly to the named beneficiary. A will does **not** necessarily control how these types of "non-probate" assets pass at your death.

6. **Are there different kinds of wills?** Yes. There are handwritten wills, typewritten wills, attorney-prepared wills and statutory wills. All are valid if done precisely as the law requires. You should see a lawyer if you do not want to use this statutory will or if you do not understand this form.

7. **Who may use this will?** This will is based on California law. It is designed for only California residents. You may use this form if you are single, married, or divorced. You must be age 18 or older and of sound mind.

8. **What happens if I make a gift in this Statutory Will to someone and they die before I do?** To take a gift under this Statutory Will the person must survive you (by 120 hours). Otherwise, the gift goes with the balance of your assets to the person or persons you designate in this Statutory Will to take the balance of your assets. A special rule applies if the person who does not survive you is a relative of you or your spouse. In that case, the gift goes to the descendants (children and descendants of deceased children) of the person you gave the gift to.

9. **Are there any reasons why I should not use this Statutory Will?** Yes. This is a simple will. It is **not** designed to reduce death or any other taxes. Talk to a lawyer to do tax planning, particularly if (i) your assets will be worth more than $600,000 at your death, or (ii) you own business related assets, or (iii) you want to create a trust fund for your children's education or other purposes, or (iv) you own assets

in some other state, or (v) you want to disinherit your spouse or descendants, or (vi) you have valuable interests in pension or profit sharing plans. You should talk to a lawyer who knows about estate planning if this will does not meet your needs. This will treats most adopted children like natural children. You should talk to a lawyer if you have step-children or foster children whom you have not adopted or if you have children born while you were not married.

10. **May I add or cross out any words on this will?** No. If you do, the will may be invalid. You may only fill in the blanks. You may amend this will by a separate document (called a codicil). Talk to a lawyer if you want to do something with your assets which is not allowed in this form.

11. **May I change my will?** Yes. A will is not effective until you die. You may make and sign a new will. You may change your will at any time, but only by an amendment (called a codicil). You can give away or sell your assets before your death. Your will only affects what you own at death.

12. **Where should I keep my will?** After you and the witnesses sign the will, keep your will in your safe deposit box or other safe place. You should tell trusted family members where your will is kept.

13. **When should I change my will?** You should make and sign a new will if you marry or divorce after you sign this will. Divorce (dissolution of marriage) or annulment automatically cancels (a) all property stated to pass to a former husband or wife under this will, and (b) designation of a former spouse as executor or guardian. You should sign a new will when you have more children, or if your spouse or a child dies. You may want to change your will if there is a large change in the value of your assets.

14. **What can I do if I do not understand something in this will?** If there is anything in this will you do not understand, ask a lawyer to explain it to you.

15. **What is an executor?** An "executor" is the person you name to collect your assets, pay your debts and taxes, and distribute your assets as the court directs. It may be a person or it may be a qualified bank or corporation.

16. **What is a guardian? Do I need to designate one?** If you have children under age 18, you should designate a "guardian of the person" to raise them. You may also want to designate a "guardian of the property" to manage their assets for them until they reach age 18. At age 18, they receive their assets outright. However, this will permits you to provide that the assets be transferred to a "custodian" who will manage the assets until your children reach a higher age, but not later than the time they reach age 25.

17. **Should I require a bond?** You may require that a guardian or executor provide a "bond". A bond is a form of insurance to replace assets that may be mismanaged or stolen by the guardian or executor. The cost of the bond is paid from the assets of your estate.

18. **What is a trust?** There are a number of kinds of trusts, but the most popular is the revocable living trust. If this type of trust is used, you place the titles to real estate, securities, and other assets in trust while you are still alive. The trust document outlines instructions for managing your assets and distributing them after you die. While you are alive, you can act as your own trustee, and you can deal with your property in any way you want. You can change the trust at any time.

Living trusts have advantages over a will. Under a will, your estate usually must be settled in probate court when you die. A probate proceeding can last for several years, and the lawyer's fees and other expenses often are substantial. In contrast, a living trust is settled without a court proceeding; the successor trustee (the person you designate in your trust to act as trustee when you die) simply distributes assets

according to the trust's instructions, with the assistance of a professional if necessary. The process is much quicker, cheaper, and more private than settling a will.

A living trust also permits you to specify in advance the person you want to manage your affairs if you ever become unable to manage your property and financial affairs. This avoids the need for you to be placed under a court-appointed conservatorship. A will can't cover this problem.

If your estate is over $600,000, you may find that a trust will save on federal estate taxes.

There are other types of trusts, including trusts created in wills. Trusts are too complicated to be used in this simple will. You should see a lawyer if you want to establish a trust.

19. **Should I ask people if they are willing to serve before I designate them as an executor or guardian?** Probably yes. Some people and entities may **not** consent to serve or may **not** be qualified to act.

INSTRUCTIONS

1. **Read the entire will form carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.**
2. **Complete the blanks on the will form. Follow the instructions on the form carefully. Warning! Do not add or cross out any words on the form (except for filling in the blanks) because all or part of this will may not be valid if you do so.**
3. **Date and sign the will and have two witnesses sign it. You and the witnesses must read and follow the witnessing procedure described at the end of this will.**

3. Gifts of Cash or Items of Personal Property (Do not include real estate.) (Optional.) I make the following gifts of cash or of the items of personal property described, and I sign my name in the box for each gift. If I don't sign in the box, I do not make a gift. **(Sign in the box for each gift you make.)**

Amount of Cash Gift or Description of Property	**Full Name of Person or Charity to Receive Gift** (Name only one. Please Print.)
	Sign Your Name In This Box for This Gift

Amount of Cash Gift or Description of Property	**Full Name of Person or Charity to Receive Gift** (Name only one. Please Print.)
	Sign Your Name In This Box for This Gift

Amount of Cash Gift or Description of Property	**Full Name of Person or Charity to Receive Gift** (Name only one. Please Print.)
	Sign Your Name In This Box for This Gift

Amount of Cash Gift or Description of Property	**Full Name of Person or Charity to Receive Gift** (Name only one. Please Print.)
	Sign Your Name In This Box for This Gift

Amount of Cash Gift or Description of Property	Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)
	Sign Your Name In This Box for This Gift

2. Disposition of My Assets. Except for the specific gifts (if any) in paragraphs 3, 4, and 5 below, I give everything that I own as provided below. **(Select <u>one</u> choice only by signing in the appropriate box.)**

a. **Choice One:** To my spouse if my spouse survives me; otherwise to my descendants (my children and the descendants of deceased children). ☐

b. **Choice Two:** To my descendants (my children and the descendants of deceased children); if I am married, nothing to my spouse. ☐

c. **Choice Three:** All to the following person: **(Insert the name of the person.)** ☐

_____

d. **Choice Four:** Equally among the following persons: **(Insert the names of two or more persons.)** ☐

_____

_____

_____

_____

3. Specific Gift of Personal Residence. (Optional. Use only if you want to give your personal residence to a different person or persons than you give your assets under paragraph 2 above.) I give my personal residence at the time of my death as provided below: **(Select <u>one</u> choice only and sign in the appropriate box.)**

a. **Choice One:** To my spouse if my spouse survives me; otherwise to my descendants (my children and the descendants of deceased children). ☐

b. **Choice Two:** To my descendants (my children and the descendants of deceased children); if I am married, nothing to my spouse. ☐

c. **Choice Three:** All to the following person: **(Insert the name of the person.)** ☐

_____

d. **Choice Four:** Equally among the following persons: **(Insert the names of two or more persons.)** ☐

_____

_____

_____

_____

4. Specific Gift of Household and Personal Property. (Optional. Use only if you want to give these items of personal property to a different person or persons than you give your assets under paragraph 2 above.) Except for the specific gifts (if any) in paragraph 5 below, I give all my furniture, furnishings, household items, clothing, jewelry, automobiles and personal items as provided below. **(Select one choice only by signing in the appropriate box.)**

a. **Choice One**: To my spouse if my spouse survives me; otherwise to my descendants (my children and the descendants of deceased children).

b. **Choice Two**: To my descendants (my children and the descendants of deceased children); if I am married, nothing to my spouse.

c. **Choice Three**: All to the following person: **(Insert the name of the person.)**

_____

d. **Choice Four**: Equally among the following persons: **(Insert the names of two or more persons.)**

_____

_____

_____

_____

5. Specific Gift of Cash or Item of Personal Property (Do not include real estate.) (Optional.) I make the following gifts of cash or of the items of personal property described below, and I sign my name in the box for each gift. If I don't sign in the box, I do not make a gift. **(Sign in the box for each gift you make.)**

Amount of Cash Gift or Description of Property	**Full Name of Person or Charity to Receive Gift** (Name only one. Please Print.)
	Sign Your Name In This Box for This Gift

Amount of Cash Gift or Description of Property	**Full Name of Person or Charity to Receive Gift** (Name only one. Please Print.)
	Sign Your Name In This Box for This Gift

Amount of Cash Gift or Description of Property	Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)
	Sign Your Name In This Box for This Gift

Amount of Cash Gift or Description of Property	Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)
	Sign Your Name In This Box for This Gift

Amount of Cash Gift or Description of Property	Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)
	Sign Your Name In This Box for This Gift