



## TRUSTS & ESTATES SECTION

THE STATE BAR OF CALIFORNIA

### ***REVISION OF STATUTORY WILL FORM***

### **LEGISLATIVE PROPOSAL (T&E-2010-07)**

TO: Saul Bercovitch, Legislative Counsel  
State Bar Office of Governmental Affairs

FROM: Jeremy Crickard, Executive Committee, Trusts and Estates Section

DATE: January 12, 2009

RE: Revision of Statutory Will Form  
- Proposal to amend Section 6240 of the Probate Code.

### **SECTION ACTION AND CONTACTS:**

Date of Approval by Section Executive Committee: November 15, 2008  
Approval vote: Unanimous

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## **SUMMARY OF PROPOSAL:**

The existing statutory will form contains advisory language that could be read to imply that notarization of statutory wills is required and that the two witnesses to the will must sign the will in each other's presence. The existing statutory will form also contains language regarding the appointment of a guardian that has caused some confusion amongst members of the public. This proposal would revise this language to clarify that notarization of statutory wills is not required, that the witnesses need not sign in each other's presence, and to provide greater clarity in the guardianship appointment language.

## **ISSUES AND PURPOSE:**

The existing statutory will form contained in Probate Code section 6240 contains the following advisory language regarding the requirement that the statutory will be signed by two adult witnesses:

“AT LEAST TWO WITNESSES MUST SIGN  
NOTARIZATION ALONE IS NOT SUFFICIENT”

The language is designed to advise a testator utilizing a statutory will that the will must be witnessed and signed by two witnesses. The language further advises that notarization will not satisfy this requirement. California law does not require that a statutory will be notarized. Further, as the existing advisory language indicates, notarization will not satisfy the witness requirement. In short, notarization of a statutory will is neither necessary nor sufficient to satisfy the witness requirement for a valid statutory will. However, the current language appears to create confusion by implying that notarization is required. There is anecdotal evidence that this language is confusing to members of the public. In addition, the Trusts and Estates Section of the State Bar of California often receives inquiries from the public. One of the most common inquiries received by the Trusts and Estates Section from members of the public is whether or not a statutory will needs to be notarized. This proposal aims to avoid this confusion by modifying the advisory language of Section 6240 quoted above to read as follows:

“AT LEAST TWO WITNESSES MUST SIGN  
~~NOTARIZATION ALONE IS NOT SUFFICIENT~~”

The attestation clause of the statutory will form also provides that the witnesses must sign as witnesses in “each other's presence.” While California law does require that both witnesses be present when the testator signs the will, and that each witness must sign in the testator's presence, there is no requirement under California law that both witnesses sign in each other's presence. *See*, Probate Code § § 6110, 6221. In fact, the California Supreme Court has determined that having the witnesses sign in the presence of each other is not an essential requirement to the due execution of a witnessed will. *See*, *In re Estate of Armstrong* (1937) 8 Cal.2d 204, 209. In order to avoid confusion regarding the proper

execution of a statutory will, this proposal modifies the notice immediately before the signature line as follows:

“Notice: You must sign this Will in the presence of two (2) adult witnesses. The witnesses must sign their names in your presence ~~and in each other's presence~~. You must first read to them the following sentence:”

For the same reasons, this proposal also modifies section d of the attestation clause as follows:

“d. We now, at the maker’s request, and in the maker’s ~~and each other’s~~ presence, sign below as witnesses;”

The proposal also includes an additional revision to the statutory will designed to avoid possible confusion by members of the public. The statutory will provides the opportunity for a testator to name a guardian for any minor children. The present language provides as follows:

“If I have a child under age 18 and the child does not have a living parent at my death, I nominate the individual named below as First Choice as guardian of the person of that child (to raise the child).”

The present language could lead a testator to believe that if he or she does not have children at the time he or she executes the statutory will, then he or she need not nominate a guardian. However, a testator may have a child after executing his or her will, and thus it is generally advisable for testators who may have children to nominate a guardian even if he or she does not have children living at the time he or she executes his or her will. There is anecdotal evidence that some members of the public may not name a guardian where it may be appropriate to do so, and that their failure to do so is a result of the current language of the statutory will. It appears that even law students completing statutory wills as a learning exercise also suffer from this misunderstanding. This proposal aims to avoid this confusion by making a technical correction to the existing statutory will language. The revised language is as follows:

“If I have a child under age 18 *at my death* and the child does not have a living parent ~~at my death~~, I nominate the individual named below as First Choice as guardian of the person of that child (to raise the child).”

### **HISTORY:**

The author is not aware of any similar bill that has been introduced either in this session or during a previous session.

### **IMPACT ON PENDING LITIGATION:**

None known.

**LIKELY SUPPORT & OPPOSITION:**

There is no known opposition and the Section does not anticipate any opposition given the technical nature and limited scope of the proposal.

**FISCAL IMPACT:**

There is no anticipated fiscal impact.

**GERMANENESS:**

The proposal relates to the use and provisions of California statutory wills and the revision of the statutory will form, which is a matter involving and requiring the special knowledge, training, experience and technical expertise of the Trusts & Estates Section, whose members have both an expert understanding of the details of the law governing the validity and interpretation of wills and also extensive experience with the effect of the application of that law on the utilization of the statutory will form by individuals and legal professionals.

**TEXT OF PROPOSAL:**

(Additions to the statutory will are shown in underline and italics; deletions shown in ~~striketrough~~.)

**California Statutory Will  
California Probate Code, Section 6240**

**INSTRUCTIONS**

- 1. **READ THE WILL.** Read the whole Will first. If you do not understand something, ask a lawyer to explain it to you.
- 2. **FILL IN THE BLANKS.** Fill in the blanks. Follow the instructions in the form carefully. Do not add any words to the Will (except for filling in blanks) or cross out any words.
- 3. **DATE AND SIGN THE WILL AND HAVE TWO WITNESSES SIGN IT.** Date and sign the Will and have two witnesses sign it. You and the witnesses should read and follow the Notice to Witnesses found at the end of this Will.

**CALIFORNIA STATUTORY WILL OF**

Print Your Full Name
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- 1. Will. This is my Will. I revoke all prior Wills and codicils.
- 2. 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 the balance of your assets to under paragraph 5 below.) I give my interest in my principal personal residence at the time of my death (subject to mortgages and liens) as follows:

(Select one choice only and sign in the box after your choice.)

a. Choice One: All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse or domestic partner, registered with the California Secretary of State, survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.



b. Choice Two: Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.



c. Choice Three: All to the following person if he or she survives me (Insert the name of the person.):



\_\_\_\_\_

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

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3. Specific Gift of Automobiles, Household and Personal Effects. (Optional—use only if you want to give automobiles

and household and personal effects to a different person or persons than you give the balance of your assets to under paragraph 5 below.) I give all of my automobiles (subject to loans), furniture, furnishings, household items, clothing, jewelry, and other tangible articles of a personal nature at the time of my death as follows:

(Select one choice only and sign in the box after your choice.)

a. Choice One: All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse or domestic partner, registered with the California Secretary of State, survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. Choice Two: Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.

c. Choice Three: All to the following person if he or she survives me (Insert the name of the person.):

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

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4. Specific Gifts of Cash. (Optional) I make the following cash gifts to the persons named below who survive me, or to the named charity, and I sign my name in the box after each gift. If I do not sign in the box, I do not make a gift. (Sign in the box after each gift you make.)

Name of Person or Charity to receive gift <i>(name one only – please print)</i>	Amount of Cash Gift _____ <i>Sign your name in this box to make this gift</i>
Name of Person or Charity to receive gift <i>(name one only – please print)</i>	Amount of Cash Gift _____ <i>Sign your name in this box to make this gift</i>
Name of Person or Charity to receive gift <i>(name one only – please print)</i>	Amount of Cash Gift _____ <i>Sign your name in this box to make this gift</i>
Name of Person or Charity to receive gift <i>(name one only – please print)</i>	Amount of Cash Gift _____ <i>Sign your name in this box to make this gift</i>
Name of Person or Charity to receive gift <i>(name one only – please print)</i>	Amount of Cash Gift _____ <i>Sign your name in this box to make this gift</i>

5. Balance of My Assets. Except for the specific gifts made in paragraphs 2, 3 and 4 above, I give the balance of my assets as follows:

(Select one choice only and sign in the box after your choice. If I sign in more than one box or if I do not sign in any box, the court will distribute my assets as if I did not make a Will.)

a. Choice One: All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse or domestic partner, registered with the California Secretary of State, survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. Choice Two: Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.

c. Choice Three: All to the following person if he or she survives me (Insert the name of the person.):

\_\_\_\_\_

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

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6. Guardian of the Child's Person. If *at my death* I have a child under age 18 and the child does not have a living parent ~~at my death~~, I nominate the individual named below as First Choice as guardian of the person of that child (to raise the child). If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve. Only an individual (not a bank or trust company) may serve.

Name of First Choice for Guardian of the Person

Name of Second Choice for Guardian of the Person

Name of Third Choice for Guardian of the Person

7. Special Provision for Property of Persons Under Age 25. (Optional—unless you use this paragraph, assets that go to a child or other person who is under age 18 may be given to the parent of the person, or to the Guardian named in paragraph 6 above as guardian of the person until age 18, and the court will require a bond, and assets that go to a child or other person who is age 18 or older will be given outright to the person. By using this paragraph you may provide that a custodian will hold the assets for the person until the person reaches any age from 18 to 25 which you choose.) If a beneficiary of this Will is under the age chosen below, I nominate the individual or bank or trust company named below as First Choice as custodian of the property. If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve.

Name of First Choice for Custodian of Assets

Name of Second Choice for Custodian of Assets

Name of Third Choice for Custodian of Assets

Insert any age from 18 to 25 as the age for the person to receive the property:  
(If you do not choose an age, age 18 will apply.)

8. Executor. I nominate the individual or bank or trust company named below as First Choice as executor. If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve.

Name of First Choice for Executor

Name of Second Choice for Executor

Name of Third Choice for Executor

9. Bond. My signature in this box means a bond is not required for any person named as executor. A bond may 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) adult witnesses. The witnesses must sign their names in your presence ~~and in each other's presence~~. You must first read to them the following sentence.)

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 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:

- a. 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;

- b. We understand this is the maker's Will;
- c. The maker signed this Will in our presence, all of us being present at the same time;
- d. We now, at the maker's request, and in the maker's ~~and each other's~~ presence, sign below as witnesses;
- e. We believe the maker is of sound mind and memory;
- f. We believe that this Will was not procured by duress, menace, fraud or undue influence;
- g. The maker is age 18 or older; and
- h. 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 of witness

Signature of witness

Print name here:  
\_\_\_\_\_

Print name here:  
\_\_\_\_\_

Residence address:  
\_\_\_\_\_  
\_\_\_\_\_

Residence address  
\_\_\_\_\_  
\_\_\_\_\_

AT LEAST TWO WITNESSES MUST SIGN  
~~NOTARIZATION ALONE IS NOT SUFFICIENT~~