

AMENDED IN SENATE JUNE 16, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1986

Introduced by Assembly Member Silva

February 17, 2010

An act to amend Section 6240 of the Probate Code, relating to wills.

LEGISLATIVE COUNSEL'S DIGEST

AB 1986, as amended, Silva. Statutory wills: form.

Existing law requires, for a statutory will to be properly executed that the testator complete the appropriate blanks and sign the will and that 2 witnesses observe the testator's signing and each witness sign his or her name in the presence of the testator. However, the form used for a statutory will also requires the witnesses to sign in each other's presence.

This bill would delete this latter requirement from the form. *The bill would add to the form a notice that the notarization would not fulfill the witness requirement. The bill would additionally change the form to account for a guardianship of a child born after the date the will is executed.* This bill would also make other technical and conforming changes.

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. Section 6240 of the Probate Code is amended to
- 2 read:
- 3 6240. The following is the California Statutory Will form:

1 statutory Wills. All are valid if done precisely as the law requires.
2 You should see a lawyer if you do not want to use this Statutory
3 Will or if you do not understand this form.

4 7. *Who may use this Will?* This Will is based on California
5 law. It is designed only for California residents. You may use this
6 form if you are single, married, a member of a domestic
7 partnership, or divorced. You must be age 18 or older and of sound
8 mind.

9 8. *Are there any reasons why I should NOT use this Statutory*
10 *Will?* Yes. This is a simple Will. It is not designed to reduce death
11 taxes or other taxes. Talk to a lawyer to do tax planning, especially
12 if (i) your assets will be worth more than \$600,000 or the current
13 amount excluded from estate tax under federal law at your death,
14 (ii) you own business-related assets, (iii) you want to create a trust
15 fund for your children's education or other purposes, (iv) you own
16 assets in some other state, (v) you want to disinherit your spouse,
17 domestic partner, or descendants, or (vi) you have valuable interests
18 in pension or profit-sharing plans. You should talk to a lawyer
19 who knows about estate planning if this Will does not meet your
20 needs. This Will treats most adopted children like natural children.
21 You should talk to a lawyer if you have stepchildren or foster
22 children whom you have not adopted.

23 9. *May I add or cross out any words on this Will?* No. If you
24 do, the Will may be invalid or the court may ignore the crossed
25 out or added words. You may only fill in the blanks. You may
26 amend this Will by a separate document (called a codicil). Talk to
27 a lawyer if you want to do something with your assets which is
28 not allowed in this form.

29 10. *May I change my Will?* Yes. A Will is not effective until
30 you die. You may make and sign a new Will. You may change
31 your Will at any time, but only by an amendment (called a codicil).
32 You can give away or sell your assets before your death. Your
33 Will only acts on what you own at death.

34 11. *Where should I keep my Will?* After you and the witnesses
35 sign the Will, keep your Will in your safe deposit box or other safe
36 place. You should tell trusted family members where your Will is
37 kept.

38 12. *When should I change my Will?* You should make and sign
39 a new Will if you marry, divorce, or terminate your domestic
40 partnership after you sign this Will. Divorce, annulment, or

1 termination of a domestic partnership automatically cancels all
2 property stated to pass to a former husband, wife, or domestic
3 partner under this Will, and revokes the designation of a former
4 spouse or domestic partner as executor, custodian, or guardian.
5 You should sign a new Will when you have more children, or if
6 your spouse or a child dies, or a domestic partner dies or marries.
7 You may want to change your Will if there is a large change in
8 the value of your assets. You may also want to change your Will
9 if you enter a domestic partnership or your domestic partnership
10 has been terminated after you sign this Will.

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

14 14. *What is an executor?* An “executor” is the person you name
15 to collect your assets, pay your debts and taxes, and distribute your
16 assets as the court directs. It may be a person or it may be a
17 qualified bank or trust company.

18 15. *Should I require a bond?* You may require that an executor
19 post a “bond.” A bond is a form of insurance to replace assets that
20 may be mismanaged or stolen by the executor. The cost of the
21 bond is paid from the estate’s assets.

22 16. *What is a guardian?* Do I need to designate one? If you
23 have children under age 18, you should designate a guardian of
24 their “persons” to raise them.

25 17. *What is a custodian?* Do I need to designate one? A
26 “custodian” is a person you may designate to manage assets for
27 someone (including a child) who is under the age of 25 and who
28 receives assets under your Will. The custodian manages the assets
29 and pays as much as the custodian determines is proper for health,
30 support, maintenance, and education. The custodian delivers what
31 is left to the person when the person reaches the age you choose
32 (from 18 to 25). No bond is required of a custodian.

33 18. *Should I ask people if they are willing to serve before I*
34 *designate them as executor, guardian, or custodian?* Probably
35 yes. Some people and banks and trust companies may not consent
36 to serve or may not be qualified to act.

37 19. *What happens if I make a gift in this Will to someone and*
38 *that person dies before I do?* A person must survive you by 120
39 hours to take a gift under this Will. If that person does not, then
40 the gift fails and goes with the rest of your assets. If the person

1 who does not survive you is a relative of yours or your spouse,
2 then certain assets may go to the relative’s descendants.

3 20. *What is a trust?* There are many kinds of trusts, including
4 trusts created by Wills (called “testamentary trusts”) and trusts
5 created during your lifetime (called “revocable living trusts”). Both
6 kinds of trusts are long-term arrangements in which a manager
7 (called a “trustee”) invests and manages assets for someone (called
8 a “beneficiary”) on the terms you specify. Trusts are too
9 complicated to be used in this Statutory Will. You should see a
10 lawyer if you want to create a trust.

11 21. *What is a domestic partner?* You have a domestic partner
12 if you have met certain legal requirements and filed a form entitled
13 “Declaration of Domestic Partnership” with the Secretary of State.
14 Notwithstanding Section 299.6 of the Family Code, if you have
15 not filed a Declaration of Domestic Partnership with the Secretary
16 of State, you do not meet the required definition and should not
17 use the section of the Statutory Will form that refers to domestic
18 partners even if you have registered your domestic partnership
19 with another governmental entity. If you are unsure if you have a
20 domestic partner or if your domestic partnership meets the required
21 definition, please contact the Secretary of State’s office.

22
23 INSTRUCTIONS
24

25 1. *READ THE WILL.* Read the whole Will first. If you do not
26 understand something, ask a lawyer to explain it to you.

27 2. *FILL IN THE BLANKS.* Fill in the blanks. Follow the
28 instructions in the form carefully. Do not add any words to the
29 Will (except for filling in blanks) or cross out any words.

30 3. *DATE AND SIGN THE WILL AND HAVE TWO WITNESSES*
31 *SIGN IT.* Date and sign the Will and have two witnesses sign it.
32 You and the witnesses should read and follow the Notice to
33 Witnesses found at the end of this Will.

34 **You do not need to have this document notarized. Notarization*
35 *will not fulfill the witness requirement.*

CALIFORNIA STATUTORY WILL OF

Print Your Full Name

- 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.):

- 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, 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.):

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 (name one only—please print)	Amount of Cash Gift
	Sign your name in this box to make this gift

Name of Person or Charity to receive gift (name one only—please print)	Amount of Cash Gift
	Sign your name in this box to make this gift

Name of Person or Charity to receive gift (name one only—please print)	Amount of Cash Gift
	Sign your name in this box to make this gift
Name of Person or Charity to receive gift (name one only—please print)	Amount of Cash Gift
	Sign your name in this box to make this gift
Name of Person or Charity to receive gift (name one only—please print)	Amount of Cash Gift
	Sign your name in this box to make this gift

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.):

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, 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.)

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

6. *Guardian of the Child's Person. If, at my death, I have a child under age 18, whether the child is alive at the time this will is executed or born after the date this will is executed, and the child does not have a living parent, 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. 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 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

O