

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 introduced, 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. 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:

4
5 QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA
6 STATUTORY WILL

7
8 The following information, in question and answer form, is not
9 a part of the California Statutory Will. It is designed to help you

1 understand about Wills and to decide if this Will meets your needs.
2 This Will is in a simple form. The complete text of each paragraph
3 of this Will is printed at the end of the Will.

4 1. *What happens if I die without a Will?* If you die without a
5 Will, what you own (your “assets”) in your name alone will be
6 divided among your spouse, domestic partner, children, or other
7 relatives according to state law. The court will appoint a relative
8 to collect and distribute your assets.

9 2. *What can a Will do for me?* In a Will you may designate
10 who will receive your assets at your death. You may designate
11 someone (called an “executor”) to appear before the court, collect
12 your assets, pay your debts and taxes, and distribute your assets
13 as you specify. You may nominate someone (called a “guardian”)
14 to raise your children who are under age 18. You may designate
15 someone (called a “custodian”) to manage assets for your children
16 until they reach any age from 18 to 25.

17 3. *Does a Will avoid probate?* No. With or without a Will,
18 assets in your name alone usually go through the court probate
19 process. The court’s first job is to determine if your Will is valid.

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

26 5. *Does my Will give away all of my assets?* Do all assets go
27 through probate? No. Money in a joint tenancy bank account
28 automatically belongs to the other named owner without probate.
29 If your spouse, domestic partner, or child is on the deed to your
30 house as a joint tenant, the house automatically passes to him or
31 her. Life insurance and retirement plan benefits may pass directly
32 to the named beneficiary. A Will does not necessarily control how
33 these types of “nonprobate” assets pass at your death.

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

39 7. *Who may use this Will?* This Will is based on California
40 law. It is designed only for California residents. You may use this

1 form if you are single, married, a member of a domestic
2 partnership, or divorced. You must be age 18 or older and of sound
3 mind.

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

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

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

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

33 12. *When should I change my Will?* You should make and sign
34 a new Will if you marry, divorce, or terminate your domestic
35 partnership after you sign this Will. Divorce, annulment, or
36 termination of a domestic partnership automatically cancels all
37 property stated to pass to a former husband, wife, or domestic
38 partner under this Will, and revokes the designation of a former
39 spouse or domestic partner as executor, custodian, or guardian.
40 You should sign a new Will when you have more children, or if

1 your spouse or a child dies, or a domestic partner dies or marries.
2 You may want to change your Will if there is a large change in
3 the value of your assets. You may also want to change your Will
4 if you enter a domestic partnership or your domestic partnership
5 has been terminated after you sign this Will.

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

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

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

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

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

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

32 19. *What happens if I make a gift in this Will to someone and*
33 *that person dies before I do?* A person must survive you by 120
34 hours to take a gift under this Will. If that person does not, then
35 the gift fails and goes with the rest of your assets. If the person
36 who does not survive you is a relative of yours or your spouse,
37 then certain assets may go to the relative’s descendants.

38 20. *What is a trust?* There are many kinds of trusts, including
39 trusts created by Wills (called “testamentary trusts”) and trusts
40 created during your lifetime (called “revocable living trusts”). Both

1 kinds of trusts are long-term arrangements in which a manager
2 (called a “trustee”) invests and manages assets for someone (called
3 a “beneficiary”) on the terms you specify. Trusts are too
4 complicated to be used in this Statutory Will. You should see a
5 lawyer if you want to create a trust.

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

17
18 INSTRUCTIONS

19
20 1. *READ THE WILL.* Read the whole Will first. If you do not
21 understand something, ask a lawyer to explain it to you.

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

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

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.

[Empty box for Choice One signature]

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.

[Empty box for Choice Two signature]

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

[Empty box for Choice Three name]

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

[Empty box for Choice Four names]

[Three horizontal lines for Choice Four names]

- 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 ~~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~~

- 1
- 2 **CORRECTIONS:**
- 3 **Text—Page 5.**
- 4

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