

What is a will?

A will is a written statement of your wishes regarding which persons your estate should be distributed after your death. It may be handwritten (called a "holographic" will), or typewritten, and there is also a California Statutory Will form. All can be valid if done as the law requires. In California, you must be generally age 18 or older and of sound mind. A will usually does avoid the court probate process. Wills are the most common way for people to plan their estates for after their deaths.

A will is not the same thing as a "living will" which is a document stating that you do not want life-sustaining treatment if you become terminally ill or permanently unconscious. The living will has been replaced by the Advance Health Care Directive in California.

A will has important purposes besides distributing your property including nominating an executor to administer your estate and guardians to protect your minor children. It can even create a trust (called a "testamentary" trust) for their benefit until they reach an age you specify and eliminate court supervision of the children's estate if desired. A will can also dispense with the need for the executor to obtain a bond and avoid that expense for the estate.

A will can also distribute assets to an existing trust (called a "living" or *intervivos* trust) and it then is called a "pour over" will. A "pour over" will is usually executed contemporaneously with the execution of a trust and gives any assets which have not been added to the trust over to the trust for administration. This can insure that all your assets are distributed through the trust even if some are not transferred to the trust prior to your death.

A will cannot affect the transfer of some assets such as joint tenancy property, retirement benefits or life insurance which by operation of law or contract pass to someone else on your death.

Generally, a holographic will is made in your own handwriting, dated and signed. Any typed or printed information in a holographic will may invalidate the will. A holographic will is probably best used in an emergency circumstance where a more formal will cannot be prepared and executed. Holographic wills have been problematic because they are typically not drafted by an attorney and the words employed by the testator can be the subject of dispute. If you have a holographic will, it is a good idea to consult with a lawyer to make sure your will conforms with California law at the earliest opportunity while there is no emergency.

The California Statutory Will is a simple Will that can be used by filling in blanks on a form and it is available on this site for download subject to this website's general disclaimer and the other specific limitations discussed below. For most people, this simple Will may be adequate for their needs.

Nonetheless, the California Statutory Will is a good document but it is a simple will for simple estates. It provides for the outright distribution of assets excepting a limited

provision for persons under 25 years. It is not designed to reduce estate taxes and does not avoid a probate of your estate. This Will is based on California law and is designed only for California residents. Although it does have a provision for holding gifts to persons until the age of 25, it does not create a trust to take care of children, a spouse or manage out-of-state assets. It also is not recommended if you intend to disinherit your spouse or domestic partner (although it purports to exclude them) or other heirs and, of course, cannot deal with nonprobate interests in retirement plans, life insurance policies or joint tenancy. If you have stepchildren or foster children whom you have not adopted but wish to inherit from your estate, this California Statutory Will is again not appropriate.

If you do not understand this form or if it does not meet your needs, obviously you should not use it. You should not attempt to modify, add or strike out any information on the form or it may be declared invalid. If you feel that the California Statutory Will is appropriate for you, it is still a good idea to consult with a lawyer to make sure your Statutory Will is completed properly and appropriate for you. Most County Bar Associations have lawyer referral services that can refer you to an experienced attorney to do so for a nominal fee. Keep the original in a safe place where your loved ones can find it quickly. Give copies of the completed form to the people you have appointed as your executors.

You should have a will, there's no excuse not to have one and you should see a lawyer if you do not want to use this Statutory Will to distribute your estate.

Generally, a typed will must be signed in front of two witnesses who are not beneficiaries of your estate, then signed by the two witnesses in each other's presence who understand that the document is a will. A typed will usually has the benefit of being drafted by an attorney which allows you to customize your estate plan to your goals and can include estate planning to minimize taxes and expenses. Planning can be extremely helpful and economical for you and your beneficiaries. Your attorney makes sure that your will conforms with California law and your attorney will usually personally supervise the execution of your will. Like a living trust which can reduce or even eliminate estate taxes, similar provisions can be placed in a will to reduce or even eliminate estate taxes but probate of the will may be required.

What does a will cost?

The cost of having a will drawn up professionally usually depends on the size and complexity of your estate. More comprehensive estate planning and preparation of other documents are usually charged at an hourly rate. However, if you have a simple estate, the cost may be modest, and you will have the benefit of professional assistance to ensure that your will meets the standards for validity with one of our will packages. Call to make a complimentary No-Obligation 30 Minute initial estate planning consultation. Then, download and complete the worksheet which will provide the information needed for our initial consultation.

What is intestacy?

If you die without a valid will or other declaration (e.g. trust), your estate will be distributed according to the laws of intestacy. The laws of intestacy also apply to property which is not disposed by a will. In an intestate distribution, the surviving spouse in California is generally entitled to all the community property and 1/3 share to all of your separate property depending on whether there are one or more children or not. Your spouse (or domestic partner) and then your children are generally entitled to be appointed as administrator of your estate in that order.

If there is no surviving spouse (or domestic partner), California law provides an elaborate hierarchy of distribution designed to ensure that an intestate estate will be distributed in any event with each class of heirs taking to the exclusion of all subsequent classes, e.g. if there is a surviving spouse or children, no other classes of heirs would be entitled to any distributions. The intestate estate first passes to surviving issue, i.e. children grandchildren, by representation. If a decedent spouse died less than 15 years before the decedent and the decedent had no surviving issue, the portion of the decedent estate attributable to the predeceased spouse passes to the surviving heirs of the deceased spouse. Then, an intestate estate next passes to the decedent's parents; then, to the surviving issue of parents by representation then to surviving grandparents or their surviving issue by representation; then, to the surviving issue of your predeceased spouse by representation; then, to surviving next of kin by representation; then to the surviving parent of a spouse or their surviving issue by representation; then, to the state of California after all other possible heirs.