



## PREVENTIVE LAW SERIES

# WILLS



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### WHAT IS A WILL?

A will is a written document that allows you to determine how certain assets and property will be distributed upon your death. It also allows you to determine who will be responsible for distributing your property and paying your debts after your death. Moreover, it will allow you to determine who will be responsible for the care of your minor children should you and the other parent die. Lastly, a will can be used to state any desires you may have regarding disposition of your remains and the nature of any funeral services.

### DO I REALLY NEED A WILL?

An attorney can advise you on the law concerning wills, but you must ultimately decide whether you want to distribute your property and care for your beneficiaries by will or in accordance with state intestacy laws—that is, the state laws that determine who inherits from you if you die “intestate” or without a will. For some people their state intestacy laws are adequate, but for many people a well-drafted will is the best way to ensure that their property will be given to the right people. Having a will may save your beneficiaries time and money later and if you have a minor child it is especially important to consider getting a will. It is recommended that you discuss your particular situation with an attorney before making a decision.

### WHAT WILL HAPPEN TO MY PROPERTY IF I DIE WITHOUT A WILL?

If you die without a will, your property will be distributed in accordance with state intestacy laws. Normally, the property will go first to your spouse, then to your children, then your parents, and then to your brothers and sisters, nieces and nephews, and other close relatives. If you are unmarried the property will go to your children, and if you have no children, to your parents. That means your friends, former spouse, or favorite charity will receive nothing. If you are not married to your current partner, then he or she will receive nothing. If you have no living relatives, your property will go to the state, even if a close friend or companion survives you. One way to ensure that your property goes to the person whom you desire is to have a will.

### WHAT PROPERTY MAY BE DISPOSED OF IN A WILL?

If you are married, your will may dispose of your separate property and your one-half of your community property or quasi-community property. If you are unmarried, your will can dispose of nearly all of your property.

### WHAT PROPERTY IS NOT DISPOSED OF IN A WILL?

A will **cannot control** what happens to some kinds of property, including:

1. Money from any life insurance policies (i.e. SGLI). That money will go to the person(s) you have named as beneficiaries on the policy, no matter whom you have chosen as beneficiaries in your will.
2. Any real estate, cars, bank accounts or other property that you own jointly with another person(s) as joint tenants with the right of survivorship. Property owned as joint tenants with the right of survivorship is transferred to the surviving joint tenants upon your death no matter whom you named as beneficiaries in your will.
3. Some community property. In California and other community property states, the money, real estate and other objects you and your spouse acquire during your marriage is called community property. Generally, both spouses own this property equally, no matter who earns the most or who actually purchased the property. Therefore, your will can only distribute your half of the community property, and cannot include

your spouse's half.

4. Money saved in your retirement plan. This money will go to the person(s) whom you have named as beneficiaries of your plan, no matter whom you name as beneficiaries in your will.
5. Property held in a living trust. This property will go to the beneficiaries of the living trust, no matter whom you have named as beneficiaries in your will.

### **WHO IS THE EXECUTOR?**

The executor is the person authorized by the court to act for the estate of the deceased person. The probate court will ordinarily appoint the person named in the will, unless unusual circumstances compel a different appointment. The executor's first job is to deposit the will with the court to have the will probated (that is, confirmed to be true), if necessary. Then, the executor is authorized to administer the estate, including paying taxes, debts, and funeral expenses, as well as ultimately settling the estate according to the terms of the will. All assets must be found and, if necessary, valued by appraisers. The executor then distributes the property to the person(s) designated in the will, and in some cases may hold property for minors until they reach the age of majority.

### **WHO CAN MAKE A WILL?**

Any individual 18 of age or older and of sound mind may make a will.

### **WHAT WILL HAPPEN TO MY CHILDREN IF I DIE WITHOUT A WILL?**

If your child's other parent is living, he or she will usually retain full custody of your child. If the child's other parent does not survive you, you may appoint a guardian and that person will take care of any minor children and/or their property. If you do not appoint a guardian, the probate court will appoint a guardian for your children in accordance with state law. The court will normally appoint a close relative if one is available, but it may not be the person you would designate. Therefore, to ensure that your wishes are followed, a will should be created designating the person you wish to care for your children. If your children are under the age of 18 you may want to consider making a life insurance trust for your children to receive if your spouse dies with you or before you. It is important to discuss this option with your attorney.

### **HOW SHOULD I DISPOSE OF MY PROPERTY?**

This question must also be answered by you. An attorney will advise you as to the legal consequences of your chosen disposition, but you must make the decision as to how to dispose of your property. Ask your attorney about leaving property to minors if you wish for a minor to inherit under your will.

### **CAN MY SPOUSE AND I HAVE THE SAME WILL?**

No. You and your spouse must each have a separate will.

### **WHEN SHOULD I CHANGE MY WILL?**

You should probably change your will after every marriage, divorce, annulment, separation, birth, death or significant event in your life that could affect how your property would be disposed of when you die. It is also recommended that you have your will reviewed every few years to ensure that it is adequate to handle your present needs. If you have questions consult with an attorney.

### **LEGAL ASSISTANCE SERVICES**

A legal assistance attorney is available by appointment Monday through Thursday from 0800 - 1030 and 1300 - 1500, and Friday from 0900 - 1100. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Building 318 – Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

## RESOURCES

San Diego County Bar Association Lawyer Referral and Information Service: (619) 231-8585;

[www.sdcba.org/index.cfm?pg=MainLRIS](http://www.sdcba.org/index.cfm?pg=MainLRIS)

San Diego County Court: [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) (click on “Wills, Estates & Trusts” under the “Probate” menu)

To find your local court in a different California county, visit <http://www.courts.ca.gov/find-my-court.htm>

California Probate Code §§ 6400–6414 (2013)

Nevada

Churchill County Court: <http://www.churchillcounty.org> (Click on “District Court” under the “Departments” menu)

Nevada Revised Statutes Chapter 133 – Wills: <https://www.leg.state.nv.us/NRS/NRS-133.html>