

A will is a document which directs what will happen to one's assets and property when he dies. A person who has made a will is called the testator. With a will, the testator may do with his assets almost anything he could have done while he was alive. He may give his property to any person or organization, create trusts, and disinherit any heir.

In the vast majority of cases, a will may be changed or revoked at any time. An amendment to a will is called a codicil. These days, most people prefer to make an entirely new will if they want to make a change, so few make codicils.

Types of Wills

Wills may be formal or holographic. Under California law, a formal will must be signed by the will's maker and witnessed by two people who will not receive any property under it. A holographic will must be *entirely* in the handwriting of the person making the will (not typed or preprinted) and must be signed and dated. Further, the California State Legislature has adopted a form statutory will which must be formally witnessed if used.

While holographic wills are as valid as formal wills, Estes & Estes recommends that most people have an attorney prepare a formal will for them. The expense is usually not prohibitive and the likelihood of a lawsuit over the validity and effect of the will is greatly reduced.

Intestate Succession

If a person dies without a will, he is said to be intestate. His property will be distributed under the laws of intestate succession. Who will receive his property may depend upon whether it is community property or his separate property,

whether he was married or had any children, and similar factors. Property will only go to the state (escheat) if the person has no living heirs or relatives.

If a person dies intestate, the court will appoint an administrator to handle the administration of the estate and disposition of the property. This person may be the spouse, a close relative, a county's Public Administrator's office or even a creditor.

Executors and Guardians

A will may designate an executor to carry out its terms and do the other jobs that an administrator would do. The executor is in charge of collecting the estate, paying bills and expenses, filing tax returns, selling assets if necessary or convenient and ultimately distributing the estate to the beneficiaries. An executor may be any adult or an institution such as a bank. If the person designated as executor is unable to act or simply does not wish to, most wills specify one or more backups.

One's will may also designate a guardian for his children. A guardian of the person of a child has the same authority as a parent concerning how the child is raised and makes decisions concerning medical care and education. The guardian of the estate manages the child's financial affairs and has the authority to decide how the money is spent. The same person may act as guardian of both the person and estate.

Property Subject to Disposition

A person is entitled to direct the disposition by will of all the property he owns at the time of his death. As one-half of community property is considered to belong to each spouse, a married person may will his half of the couple's

community property to whomever he wishes. He does not own the other half of a couple's community property so a decedent's will does not dispose of the surviving spouse's half unless he or she consents. An exception to this rule is where property is held as community property with right of survivorship, which must go to the surviving spouse. Joint tenancy property passes automatically to the surviving joint tenant on death, so such property is not affected by the deceased joint tenant's will.

Types of Gifts

A gift of a particular piece of property or sum of money is called a specific gift. However, it is not necessary to identify each specific property or item to be given. Rather, if you prefer, you may make a general gift, such as "I give all of my property (or all my stocks) to so-and-so."

A gift of whatever is left after creditors and expenses have been paid is called a residual gift, which is often the biggest gift made. For example, many wills have a provision along the lines of "I give the rest of my estate in equal shares to my children who survive me."

A will can also specify that assets be held in trust. In that case, a trustee is named to hold and administer some or all of the estate, and will be distributed.

Living Trusts

Many people have elected to use a living trust as a substitute for their will. In most cases people who create a living trust will also execute a pour-over will. Such wills are relatively simple, and direct that anything that is not already in the trust at the time of death should go into the trust.

Personal Lists

Many people wish to keep a list separate from their will of the disposition of specific personal items. Such a procedure is acceptable under California Law if it is in the testator's handwriting or signed by him. No single item may be worth more than \$5,000 and the total value of items disposed of by the list may not exceed \$25,000. If these requirements are not met, the list will have no legal effect, and the general terms of the will will be legally enforced.

Carrying out Terms of Will

The usual method by which property is passed to the people named in one's will (or one's heirs at law if they die intestate) is by means of a probate proceeding. The proceeding is begun by filing a petition in the Superior Court. Thereafter, the executor or administrator collects the decedent's property, prepares an inventory and valuation of the estate, sells some or all of the property if necessary, pays creditors, accounts for what was done, pays executor's commissions and attorney's fees and ultimately, distributes the estate to the beneficiaries.

Just about everyone should have a will. If you don't, your assets will be distributed the way the legislature thinks you would want them distributed, which may be quite different from what you would wish. Further, the person named to administer your estate might be someone that you would not choose. A will can be a simple and inexpensive way to avoid these and other problems.

ABOUT ESTES & ESTES

Estes & Estes represents clients in estate planning and administration matters, as well as litigation relating to those areas. The firm's attorneys have collectively more than 50 years of service to families in South Orange County.

We strive to deliver legal services at the highest level and at the same time, fully understand the unique needs of each of our clients.

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WILLS



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