



## **WILLS AND TRUSTS**

**JUNE 24, 2008**

### **WHAT IS A WILL?**

A will is the most basic type of estate planning document. It provides instructions regarding actions to be carried out after your death. Typically a will provides for:

- Distribution of some or all of the assets in your name;
- Nomination of a guardian for your minor children; and
- Nomination of an executor, the person who carries out your instructions.

### **WHAT PROPERTY ISN'T COVERED BY A WILL?**

The following assets do not pass under your will:

- Life insurance proceeds
- Joint tenancy assets
- "Pay on death" accounts
- Retirement plans
- Revocable (living) trust assets

### **CAN I PREPARE MY OWN WILL?**

Yes. However, a will must be prepared and executed in compliance with specific legal formalities that can easily be confused or overlooked by a lay person. Further, only a qualified attorney can ensure that your desires are adequately expressed in language that is best capable of withstanding a challenge. For these reasons it is strongly recommended that your will be prepared by a qualified estate planning attorney.

### **WHAT IS A REVOCABLE LIVING TRUST?**

A revocable living trust holds your assets during your lifetime and distribute your assets at death. A revocable living trust are that it avoids probate of assets in the trust and can also avoid a conservatorship of the estate in the event of incapacity.

## **DOES EVERYONE NEED A REVOCABLE LIVING TRUST?**

Not necessarily. However, while there are some general guidelines that apply, because everyone's circumstances are unique it is safest to rely on the advice of a qualified estate planning attorney as to whether you should have a revocable living trust.

## **WILL MY HEIRS OR BENEFICIARIES HAVE TO PAY ESTATE TAX?**

Estate taxes are currently payable only on very large estates. In 2008, only estates with a net value of \$2,000,000 or more are subject to estate tax. In 2009 that amount increases to \$3,500,000, and in 2010 there is no estate tax. There is likely to be congressional action regarding the extension of the estate tax, limiting it to very large estates, over the next few years.

## **HOW CAN I LEARN MORE?**

Contact an attorney who specializes in estate planning. The California State Bar designates certain attorneys who have completed extensive education, testing, and length and breadth of practice criteria as Certified Specialists in Estate Planning, Probate and Trust Law. A list of Specialists in Orange County can be found on the State Bar website. A good alternative referral source is the Orange County Bar Association.

Also, visit the State Bar of California web page for access to three pamphlets published by the State Bar ("Do I Need A Will?"; "Do I Need a Living Trust?"; and "Do I Need Estate Planning?"), as well as a statutory will form and a section of frequently asked questions. Go to [www.calbar.ca.gov](http://www.calbar.ca.gov), click on "Public Services," then click on "Making a Simple Will."

## **Glossary**

Advance Health Care Directive	The document that allows an individual to appoint an agent to make care and treatment decisions, and to give instructions about the individual's health care wishes.
Annual Exclusion	An amount (currently \$12,000) that can be given annually to any one or more persons. A husband and wife together can give \$24,000 each year to any number of people.
Annuity	The periodic payment of a fixed sum of money for a lifetime or for a number of years.
Beneficiary	A person or entity that derives benefit from a will, trust, insurance policy, or other legally binding document or contract.

Codicil	An amendment to a will, which must be executed with the same formalities as a will.
Conservator	A person or entity appointed by a court to manage the person or estate of a person incapable of managing his or her own affairs.
Contingency	A possibility or an event which may occur. For example, a contingent beneficiary.
Corpus	The property held in a trust, other than current income.
Decedent	A deceased person.
Deed	A legal instrument used to transfer title to real property.
Domicile	The place where a person has voluntarily elected to reside, not for a temporary purpose, but with a present intention of making it his or her home.
Donee	One who receives a gift.
Donor	One who makes a gift.
Durable Power of Attorney	A document in which an individual or entity is designated to exercise specific powers on behalf of the maker in the event the maker is unwilling or unable to act on his or her own behalf.
Escheat	The process by which a decedent's property is transferred to the state.
Estate Tax	Taxes assessed by the federal government upon a decedent's right to transfer property.
Fiduciary	A person or entity entrusted with duty to care for an asset of another.
Guardian	A person or entity appointed by a court to manage the person or estate of a minor.
Heirs	Those persons who are entitled to the property of a decedent under the laws of intestate succession.
Inherit	To receive property from a deceased person.

Inter Vivos Trust (also known as a Living Trust or a Revocable Trust)	A trust established, and which may be amended, by a person during his or her lifetime.
Intestate	The term used when a person dies without leaving a valid will.
Irrevocable Trust	A trust in which the grantor expressly gives up the power to alter, amend or terminate the trust, in whole or in part.
Joint Tenancy	A form of co-ownership in which two or more persons hold title to the same property, with title eventually passing to the ultimate survivor.
Life Estate	The right of a person to use property only for his or her lifetime.
Payable on Death(POD)	An account that is automatically payable at death to a named person.
Personal Property	Tangible assets whose ownership arises out of physical possession or a document of ownership.
Probate	The formal administration of the estate of a decedent, involving the collection of assets, payment of expenses, and distribution to heirs or beneficiaries.
Tenancy in Common	A type of co-ownership between two or more persons who hold undivided interests in property without any right of survivorship.
Testamentary	Pertaining to a will.
Testamentary Trust	A trust established in a will.
Testator	A person making or who has made a will.
Trust	The legal relationship created when one person holds title to property for the benefit of another.
Trustee	The person or entity appointed to hold and administer trust property.
Trustor (or Settlor)	The maker of a trust,
Will	A legal instrument expressing a person's wishes as to the disposition of his or her property at death.
Witness	The person who observes the signing of a will or other legal instrument.

**Orange County Employees Association**  
**830 North Ross Street, Santa Ana, CA 92701 714-835-3355; [www.oceamember.org](http://www.oceamember.org)**



SAMPLE ESTATE PLANNING  
CONFIDENTIAL QUESTIONNAIRE

**Client Information**

**Legal name:** \_\_\_\_\_  
first middle last

List all prior legal names \_\_\_\_\_.

List all other names used \_\_\_\_\_.

**Date of birth:** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Place of birth:** \_\_\_\_\_  
city state country

**Social Security number:** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**U.S. citizen:** Yes \_\_\_\_ No \_\_\_\_ **California resident:** Yes \_\_\_\_ No \_\_\_\_

**Permanent address:** \_\_\_\_\_  
street address city state zip code County

Do you claim Florida homestead exemption? Yes \_\_\_\_ No \_\_\_\_

**Telephone numbers:** Home \_\_\_\_\_ Work \_\_\_\_\_ Cell phone \_\_\_\_\_

**Occupation:** \_\_\_\_\_ **Employer:** \_\_\_\_\_

**Marital status** single / married / divorced / separated / widowed

**Marital history** :Have you ever been divorced or widowed? Yes \_\_\_\_ No \_\_\_\_

## **Family Information**

### **Spouse**

If you are currently married, please state the date and place of your marriage, and the legal name and birth date of your spouse:

**Date of marriage:** \_\_\_\_/\_\_\_\_/\_\_\_\_  
Date city state country

**Legal name of spouse:** \_\_\_\_\_ Maiden Name \_\_\_\_\_  
first middle last

**Date of birth of spouse:** \_\_\_\_/\_\_\_\_/\_\_\_\_

Did you enter into a "pre-nuptial" or "post-nuptial agreement"? Yes \_\_\_\_ No \_\_\_\_  
If yes, please attach a signed copy with all subsequent modifications.

While married, have you ever lived in a state other than Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington or Wisconsin? Yes \_\_\_\_ No \_\_\_\_

If yes, did you purchase a home or other real property in that state? Yes \_\_\_\_ No \_\_\_\_

### **Children**

If you have any children, please state the legal name and birth date of each child and state whether a child has any children (i.e., your grandchildren). Do not include a step child or foster child who lives with you. Use additional sheets if necessary.

1. **Legal name:** \_\_\_\_\_  
first middle last

**Date of birth:** \_\_\_\_/\_\_\_\_/\_\_\_\_ **Children? If yes, # and names** \_\_\_\_\_

2. **Legal name:** \_\_\_\_\_  
first middle last

**Date of birth:** \_\_\_\_/\_\_\_\_/\_\_\_\_ **Children? If yes, # and names** \_\_\_\_\_

**Has any child predeceased you?** YES/NO **Did they have children** YES/NO

**Information for Your Will or Trust / Fiduciaries / Personal Representative**

Who do you want to nominate as the “personal representative” or the executor of your estate? Married people often select their spouse. Please note that under California law, if the personal representative is not related to you, or the spouse of someone related to you, he or she must be a California resident. You may also select “joint” personal representatives or a “corporate” personal representative (e.g., bank or trust company).

**Personal Representative**

**Legal name:** \_\_\_\_\_  
first middle initial last

**Current address:** \_\_\_\_\_  
street address city state zip county

**Relationship to you:** \_\_\_\_\_

**Alternate Personal Representative**

**Legal name:** \_\_\_\_\_  
first middle initial last

**Current address:** \_\_\_\_\_  
street address city state zip county

**Relationship to you:** \_\_\_\_\_

Some probate judges will allow the personal representative to serve without having to post a bond if the decedent’s will waives the bond requirement. Other judges refuse to allow a waiver because of concerns about protecting estate creditors and beneficiaries from misfeasance or nonfeasance. Do you want your personal representative or alternate to be required post a bond (which is paid by your estate) to be able to serve? Yes \_\_\_\_ No \_\_\_\_

**Trustee**

If you are considering establishing a trust during your life or after your death for a spouse, child, grandchild, parent or another person or charity (especially to avoid payment of large sums of money to a beneficiary at one time, or prior to a beneficiary attaining a certain age, or for a specific purpose), whom do you want to nominate as the trustee? You may also select “co-trustees” or a “corporate” trustee (e.g., bank or trust company).

**Legal name:** \_\_\_\_\_  
first middle initial last

**Current address:** \_\_\_\_\_  
street address city state zip county

**Relationship to you:** \_\_\_\_\_

### **Alternate Trustee**

**Legal name:** \_\_\_\_\_  
first middle initial last

**Current address:** \_\_\_\_\_  
street address city state zip county

**Relationship to you:** \_\_\_\_\_

Do you want your trustee or alternate to be required to post a bond (which is paid from the trust assets) to be able to serve? Yes \_\_\_\_\_ No \_\_\_\_\_

### **Guardians**

If you have any children who are minors, a guardian should be named in your will to care for their person and to manage their property until they attain 18 years of age in the event of the death of both parents. You may nominate “joint” guardians. You may also nominate separate guardians for a child, that is, a “guardian of the person” and a “guardian of the property” especially if a proposed guardian may not be suitable for handling a child's property and finances. A guardian of the property could include a “corporate” guardian or corporate co-guardian.

**Legal name:** \_\_\_\_\_  
first middle initial last

**Current address:** \_\_\_\_\_  
street address city state zip county

**Relationship to you:** \_\_\_\_\_

**Legal name:** \_\_\_\_\_  
first middle initial last

**Current address:** \_\_\_\_\_  
street address city state zip county

**Relationship to you:** \_\_\_\_\_

### **Specific Bequests**

List any specific items (e.g., automobiles, jewelry, personal effects, etc.) or specific amounts of money that you wish to leave to one or more beneficiaries. If you have a large number of items of “tangible personal property” that you want to give to several persons, you may want to consider having a “separate writing” prepared.

<u>Item or Amount</u>	<u>Name of Beneficiary</u>	<u>Address of Beneficiary</u>	<u>Relationship</u>

If a beneficiary of a specific bequest does not survive you, state who is to receive his or her share (e.g., the children of that beneficiary or one or more other persons).

\_\_\_\_\_.

### **Remainder**

After paying expenses of administration and any debts and taxes, and after distributing any specific bequests, the balance of your estate is referred to as the “remainder.” Who do you want to receive the remainder and in what amount or percent.

<u>Name of Beneficiary</u>	<u>Address of Beneficiary</u>	<u>Relationship</u>	<u>Percentage or Amount</u>

If a residuary beneficiary does not survive you, who is to receive his or her share (e.g., the children of that beneficiary or one or more other persons).

### Miscellaneous

Do you currently have: (If yes to any please attach signed copies with any codicils or amendments)

A will or revocable living trust? Yes \_\_\_\_ No \_\_\_\_

A durable power of attorney? Yes \_\_\_\_ No \_\_\_\_

A health care directive? Yes \_\_\_\_ No \_\_\_\_

#### **If you want:**

1. Any of your **organs donated** at your death, state: the specific organs (or allow any usable):

any limitations on their use (or allow any purpose): \_\_\_\_\_

2. A specific **disposition of your remains** (e.g., cremation, burial at specific cemetery, etc.),

specify the disposition: \_\_\_\_\_

**durable power of attorney** (i.e., a document authorizing another person to control your assets on your behalf and for your benefit),

**Effective date of Power:** \_\_\_\_\_ immediately  
\_\_\_\_\_ if a specific date, specify date \_\_\_\_/\_\_\_\_/  
\_\_\_\_\_ only if I am unavailable  
\_\_\_\_\_ **only if I become mentally or physically incapacitated**

**Legal name:** \_\_\_\_\_  
first middle initial last

**Current address:** \_\_\_\_\_  
street address city state zip county

**Relationship to you:** \_\_\_\_\_



**Legal name:** \_\_\_\_\_  
first middle initial last

**Current address:** \_\_\_\_\_  
street address city state zip county

**Relationship to you:** \_\_\_\_\_

4. A **health care directive** (i.e., documents authorizing another person to carry out your wishes in the event you are unable to communicate your decisions concerning extending, withholding or withdrawing life-prolonging procedures under certain legally-permissible circumstances), state:

**Health Care Agent**

**Legal name:** \_\_\_\_\_  
first middle initial last

**Current address:** \_\_\_\_\_  
street address city state zip code

**Relationship to you:** \_\_\_\_\_

**Telephone numbers:** Home \_\_\_\_\_ Work \_\_\_\_\_

**Alternate Health Care Agent**

**Legal name:** \_\_\_\_\_  
first middle initial last

**Current address:** \_\_\_\_\_  
street address city state zip code

**Relationship to you:** \_\_\_\_\_

**Telephone numbers:** Home \_\_\_\_\_ Work \_\_\_\_\_

### **Summary of Assets and Liabilities**

Note: The following is a financial summary for estate and tax planning purposes. Further detailed information and copies of documents concerning particular assets and liabilities may be requested.

#### **Assets**

Please state the estimated value of all assets you own or in which you have any interest (either individually or jointly or that are held in trust for your benefit). Concerning each category, indicate total values for each form of ownership without deducting any mortgage or debt. If you own an asset individually that is “payable on death” to a named beneficiary (e.g., a bank account, IRA or other retirement account, annuity, etc.), please provide a copy of the supporting documents.

	Client (only)	Jointly with Spouse	Jointly with Others	Total
Residence				
Other real property				
Bank accounts, certificates of deposit and money market funds				
Stocks, bonds and mutual funds				
Businesses in which you own an interest (e.g., as sole proprietor, partner, shareholder, member)				
Receivables <u>paid to you</u> (e.g., mortgage note, promissory note)				
Cash value ( <u>not death benefit</u> ) of life insurance you own				
Household furniture, furnishings and appliances				
Motor vehicles				
Jewelry, art objects, antiques, collections and other valuable personal property				
Retirement accounts (e.g., qualified plan, IRA - do not include social security benefits)				
Annuities				
Miscellaneous other property not included above				
Trusts in which you are a beneficiary				
Total assets:				

### **Liabilities**

	Client (only)	Jointly with Spouse	Jointly with Others	Total
Mortgage(s) on residence				
Mortgage(s) on other real property				
Personal or unsecured debts you owe to others				
Other significant debts, liabilities and judgments				
Total liabilities:				

### **Net Worth**

Your total Assets less your total Liabilities: \$ \_\_\_\_\_

### **Life Insurance**

List all life insurance policies insuring your life.

Amount of death benefit	Type of policy (e.g. term, whole life)	Beneficiary	Owner	Company
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Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Client