

# PROBATE LAW

This section will provide an overview of basic terms and concepts in the area of probate law. Probate law governs the steps needed to ensure one's wishes are fulfilled after death or when one is not able to care for oneself.

## **WILLS**

A will is a legally enforceable document that describes how a person would like to have his or her property distributed after death. A will may also include provisions addressing who the person would like to have care for his or her minor children in the event of death or incapacity.

There are certain legal requirements for a will to be valid:

- ▶ **Age:** Generally, a person must be at least 18 years old to make a will. Probate Code Section 6100.
- ▶ **Mental State:** A person must have sufficient mental capacity to make a will. This essentially means that a person must know that he or she is making a will and must be aware of the purpose of the will. The individual must know what kinds of property he or she possesses and how he or she would like to distribute his or her property. He or she must also remember and understand his or her relationship with living descendants, spouse, and parents, and those whose interests are affected by the will. Prob. C. §6100.5.
- ▶ **Executor.** A will should designate an executor. An “executor” is the person in charge of making sure that the wishes expressed in the will are carried out. Often, young people will want their parents to serve in this role. Generally, however, it is advisable to choose a person of similar or younger age to serve as executor. If an individual decides to name a parent as executor, an alternate executor that is contemporary in age to the person should be designated.
- ▶ **Signature.** A will generally must be signed in the presence of two witnesses. Prob. C. §6110. This is to ensure that the will is authentic.
- ▶ **Other Legal Requirements.** In California, wills may be typewritten or handwritten. The document should specifically state that it is a will. There must be at least one clause in the will that expresses a wish to be carried out after death, though it does not necessarily have to address the distribution of property. A will that makes arrangements for a guardian for children, but makes no mention of property, is still valid.

## **NOT HAVING A WILL**

If a person dies without having a will, the person's property is divided according to state law—typically, between a person's spouse and children. If a person does not have a spouse or children, property is usually transferred to close relatives.

State law would often distribute property differently than individuals normally would, had they created a will. For example, state law generally provides that no property is distributed to close friends or charitable institutions. State law also dictates that if a person has no close relatives, the person's property will go to the state.

It is important to consider speaking with an attorney about drafting a will. It is also advisable to seek legal counsel to learn about other means of distributing property, such as trusts and joint tenancies.

### **DURABLE POWER OF ATTORNEY FOR HEALTHCARE**

A "Durable Power of Attorney for Healthcare" is a document that authorizes someone to make medical and healthcare decisions for an individual should he or she ever become unable to do so. A power of attorney typically appoints and provides guidance to a designated person to make medical and healthcare decisions. It is important to discuss the nature of care desired with close family members even if a power of attorney has already been drafted.

### **Getting Help**

#### ***General Legal***

Student Legal Services, 858.534.4374 or <http://sls.ucsd.edu>

#### ***Resources for Further Research***

California Courts Self-Help Center: Wills, Probates, Trusts and Estates  
<http://www.courtinfo.ca.gov/selfhelp/additionalinfo/links.htm#wills>