

CALIFORNIA PROBATE CODE

WILLS AND INTESTATE SUCCESSION

CHAPTER 1. GENERAL PROVISIONS

6100. (a) An individual 18 or more years of age who is of sound mind may make a will.

(b) A conservator may make a will for the conservatee if the conservator has been so authorized by a court order pursuant to Section 2580. Nothing in this section shall impair the right of a conservatee who is mentally competent to make a will from revoking or amending a will made by the conservator or making a new and inconsistent will.

6100.5. (a) An individual is not mentally competent to make a will if at the time of making the will either of the following is true:

(1) The individual does not have sufficient mental capacity to be able to (A) understand the nature of the testamentary act, (B) understand and recollect the nature and situation of the individual's property, or (C) remember and understand the individual's relations to living descendants, spouse, and parents, and those whose interests are affected by the will.

(2) The individual suffers from a mental disorder with symptoms including delusions or hallucinations, which delusions or hallucinations result in the individual's devising property in a way which, except for the existence of the delusions or hallucinations, the individual would not have done.

(b) Nothing in this section supersedes existing law relating to the admissibility of evidence to prove the existence of mental incompetence or mental disorders.

(c) Notwithstanding subdivision (a), a conservator may make a will on behalf of a conservatee if the conservator has been so authorized by a court order pursuant to Section 2580.

6101. A will may dispose of the following property:

(a) The testator's separate property.

(b) The one-half of the community property that belongs to the testator under Section 100.

(c) The one-half of the testator's quasi-community property that belongs to the testator under Section 101.

6102. A will may make a disposition of property to any person, including but not limited to any of the following:

(a) An individual.

(b) A corporation.

(c) An unincorporated association, society, lodge, or any branch thereof.

(d) A county, city, city and county, or any municipal corporation.

(e) Any state, including this state.

(f) The United States or any instrumentality thereof.

(g) A foreign country or a governmental entity therein.

6103. Except as otherwise specifically provided, Chapter 1 (commencing with Section 6100), Chapter 2 (commencing with Section 6110), Chapter 3 (commencing with Section 6120), Chapter 4 (commencing with Section 6130), Chapter 6 (commencing with Section 6200), and Chapter 7 (commencing with Section 6300) of this division, and Part 1 (commencing with Section 21101) of Division 11, do not apply where the testator died before January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the testator died before January 1, 1985.

6104. The execution or revocation of a will or a part of a will is ineffective to the extent the execution or revocation was procured by duress, menace, fraud, or undue influence.

6105. A will, the validity of which is made conditional by its own terms, shall be admitted to probate or rejected, or denied effect after admission to probate, in conformity with the condition.

CHAPTER 2. EXECUTION OF WILLS

6110. (a) Except as provided in this part, a will shall be in writing and satisfy the requirements of this section.

(b) The will shall be signed by one of the following:

(1) By the testator.

(2) In the testator's name by some other person in the testator's presence and by the testator's direction.

(3) By a conservator pursuant to a court order to make a will under Section 2580.

(c) The will shall be witnessed by being signed by at least two persons each of whom (1) being present at the same time, witnessed either the signing of the will or the testator's acknowledgment of the signature or of the will and (2) understand that the instrument they sign is the testator's will.

6111. (a) A will that does not comply with Section 6110 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

(b) If a holographic will does not contain a statement as to the date of its execution and:

(1) If the omission results in doubt as to whether its provisions or the inconsistent provisions of another will are controlling, the holographic will is invalid to the extent of the inconsistency unless the time of its execution is established to be after the date of execution of the other will.

(2) If it is established that the testator lacked testamentary capacity at any time during which the will might have been executed, the will is invalid unless it is established that it was executed at a time when the testator had testamentary capacity.

(c) Any statement of testamentary intent contained in a holographic will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.

6111.5. Extrinsic evidence is admissible to determine whether a document constitutes a will pursuant to Section 6110 or 6111, or to determine the meaning of a will or a portion of a will if the meaning is unclear.

6112. (a) Any person generally competent to be a witness may act as a witness to a will.

(b) A will or any provision thereof is not invalid because the will is signed by an interested witness.

(c) Unless there are at least two other subscribing witnesses to the will who are disinterested witnesses, the fact that the will makes a devise to a subscribing witness creates a presumption that the witness procured the devise by duress, menace, fraud, or undue influence. This presumption is a presumption affecting the burden of proof. This presumption does not apply where the witness is a person to whom the devise is made solely in a fiduciary capacity.

(d) If a devise made by the will to an interested witness fails because the presumption established by subdivision (c) applies to the devise and the witness fails to rebut the presumption, the interested witness shall take such proportion of the devise made to the witness in the will as does not exceed the share of the estate which would be distributed to the witness if the will were not established. Nothing in this subdivision affects the law that applies where it is established that the witness procured a devise by duress, menace, fraud, or undue influence.

6113. A written will is validly executed if its execution complies with any of the following:

(a) The will is executed in compliance with Section 6110 or 6111 or Chapter 6 (commencing with Section 6200) (California statutory will) or Chapter 11 (commencing with Section 6380) (Uniform International Wills Act).

(b) The execution of the will complies with the law at the time of execution of the place where the will is executed.

(c) The execution of the will complies with the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

CHAPTER 3. REVOCATION AND REVIVAL

6120. A will or any part thereof is revoked by any of the following:

- (a) A subsequent will which revokes the prior will or part expressly or by inconsistency.
- (b) Being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by either (1) the testator or (2) another person in the testator's presence and by the testator's direction.

6121. A will executed in duplicate or any part thereof is revoked if one of the duplicates is burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by either (1) the testator or (2) another person in the testator's presence and by the testator's direction.

6122. (a) Unless the will expressly provides otherwise, if after executing a will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes all of the following:

- (1) Any disposition or appointment of property made by the will to the former spouse.
- (2) Any provision of the will conferring a general or special power of appointment on the former spouse.
- (3) Any provision of the will nominating the former spouse as executor, trustee, conservator, or guardian.

(b) If any disposition or other provision of a will is revoked solely by this section, it is revived by the testator's remarriage to the former spouse.

(c) In case of revocation by dissolution or annulment:

- (1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator.
- (2) Other provisions of the will conferring some power or office on the former spouse shall be interpreted as if the former spouse failed to survive the testator.

(d) For purposes of this section, dissolution or annulment means any dissolution or annulment which would exclude the spouse as a surviving spouse within the meaning of Section 78. A decree of legal separation which does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(e) Except as provided in Section 6122.1, no change of circumstances other than as described in this section revokes a will.

(f) Subdivisions (a) to (d), inclusive, do not apply to any case where the final judgment of dissolution or annulment of marriage occurs before January 1, 1985. That case is governed by the law in effect prior to January 1, 1985.

6122.1. (a) Unless the will expressly provides otherwise, if after executing a will the testator's domestic partnership is terminated, the termination revokes all of the following:

- (1) Any disposition or appointment of property made by the will to the former domestic partner.
- (2) Any provision of the will conferring a general or special power of appointment on the former domestic partner.
- (3) Any provision of the will nominating the former domestic partner as executor, trustee, conservator, or guardian.

(b) If any disposition or other provision of a will is revoked solely by this section, it is revived by the testator establishing another domestic partnership with the former domestic partner.

(c) In case of revocation by termination of a domestic partnership:

- (1) Property prevented from passing to a former domestic partner because of the revocation passes as if the former domestic partner failed to survive the testator.
- (2) Other provisions of the will conferring some power or office on the former domestic partner shall be interpreted as if the former domestic partner failed to survive the testator.

(d) This section shall apply only to wills executed on or after January 1, 2002.

6123. (a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under Section 6120 or 6121, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from the testator's contemporary or subsequent declarations that the testator intended the first will to take effect as executed.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole

or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

6124. If the testator's will was last in the testator's possession, the testator was competent until death, and neither the will nor a duplicate original of the will can be found after the testator's death, it is presumed that the testator destroyed the will with intent to revoke it. This presumption is a presumption affecting the burden of producing evidence.

CHAPTER 4. REFERENCE TO MATTERS OUTSIDE THE WILL

6130. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

6131. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether the acts and events occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

CHAPTER 6 CALIFORNIA STATUTORY WILL

6200. Unless the provision or context clearly requires otherwise, these definitions and rules of construction govern the construction of this chapter.

6201. "Testator" means a person choosing to adopt a California statutory will.

6203. "Executor" means both the person so designated in a California statutory will and any other person acting at any time as the executor or administrator under a California statutory will.

6204. "Trustee" means both the person so designated in a California statutory will and any other person acting at any time as the trustee under a California statutory will.

6205. "Descendants" mean children, grandchildren, and their lineal descendants of all generations, with the relationship of parent and child at each generation being determined as provided in Section 21115. A reference to "descendants" in the plural includes a single descendant where the context so requires.

6206. A reference in a California statutory will to the "Uniform Gifts to Minors Act of any state" or the "Uniform Transfers to Minors Act of any state" includes both the Uniform Gifts to Minors Act of any state and the Uniform Transfers to Minors Act of any state. A reference to a "custodian" means the person so designated in a California statutory will or any other person acting at any time as a custodian under a Uniform Gifts to Minors Act or Uniform Transfers to Minors Act.

6207. Masculine pronouns include the feminine, and plural and singular words include each other, where appropriate.

6208. (a) If a California statutory will states that a person shall perform an act, the person is required to perform that act.

(b) If a California statutory will states that a person may do an act, the person's decision to do or not to do the act shall be made in the exercise of the person's fiduciary powers.

6209. Whenever a distribution under a California statutory will is to be made to a person's descendants, the property shall be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave descendants then living; and each living descendant of the nearest degree shall receive one share and the share of each deceased descendant of that same degree shall be divided among his or her descendants in the same

manner.

6210. "Person" includes individuals and institutions.

6211. Reference to a person "if living" or who "survives me" means a person who survives the decedent by 120 hours. A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for the purpose of a California statutory will, and the beneficiaries are determined accordingly. If it cannot be established by clear and convincing evidence that a person who would otherwise be a beneficiary has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. The requirement of this section that a person who survives the decedent must survive the decedent by 120 hours does not apply if the application of the 120-hour survival requirement would result in the escheat of property to the state.

6220. Any individual of sound mind and over the age of 18 may execute a California statutory will under the provisions of this chapter.

6221. A California statutory will shall be executed only as follows:

- (a) The testator shall complete the appropriate blanks and shall sign the will.
- (b) Each witness shall observe the testator's signing and each witness shall sign his or her name in the presence of the testator.

6222. The execution of the attestation clause provided in the California statutory will by two or more witnesses satisfies Section 8220.

6223. (a) There is only one California statutory will.

(b) The California statutory will includes all of the following:

- (1) The contents of the California statutory will form set out in Section 6240, excluding the questions and answers at the beginning of the California statutory will.
- (2) By reference, the full texts of each of the following:
 - (A) The definitions and rules of construction set forth in Article 1 (commencing with Section 6200).
 - (B) The property disposition clauses adopted by the testator. If no property disposition clause is adopted, Section 6224 shall apply.
 - (C) The mandatory clauses set forth in Section 6241.
- (c) Notwithstanding this section, any California statutory will or California statutory will with trust executed on a form allowed under prior law shall be governed by the law that applied prior to January 1, 1992.

6224. If more than one property disposition clause appearing in paragraphs 2 or 3 of a California statutory will is selected, no gift is made. If more than one property disposition clause in paragraph 5 of a California statutory will form is selected, or if none is selected, the residuary estate of a testator who signs a California statutory will shall be distributed to the testator's heirs as if the testator did not make a will.

6225. Only the texts of property disposition clauses and the mandatory clauses shall be considered in determining their meaning. Their titles shall be disregarded.

6226. (a) A California statutory will may be revoked and may be amended by codicil in the same manner as other wills.

(b) Any additions to or deletions from the California statutory will on the face of the California statutory will form, other than in accordance with the instructions, shall be given effect only where clear and convincing evidence shows that they would effectuate the clear intent of the testator. In the absence of such a showing, the court either may determine that the addition or deletion is ineffective and shall be disregarded, or may determine that all or a portion of the California statutory will is invalid, whichever is more likely to be consistent with the intent of the testator.

(c) Notwithstanding Section 6110, a document executed on a California statutory will form is valid as a

will if all of the following requirements are shown to be satisfied by clear and convincing evidence:

- (1) The form is signed by the testator.
- (2) The court is satisfied that the testator knew and approved of the contents of the will and intended it to have testamentary effect.
- (3) The testamentary intent of the maker as reflected in the document is clear.

6227. (a) If after executing a California statutory will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes any disposition of property made by the will to the former spouse and any nomination of the former spouse as executor, trustee, guardian, or custodian made by the will. If any disposition or nomination is revoked solely by this section, it is revived by the testator's remarriage to the former spouse.

(b) In case of revocation by dissolution or annulment:

(1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator.

(2) Provisions nominating the former spouse as executor, trustee, guardian, or custodian shall be interpreted as if the former spouse failed to survive the testator.

(c) For purposes of this section, dissolution or annulment means any dissolution or annulment that would exclude the spouse as a surviving spouse within the meaning of Section 78. A decree of legal separation which does not terminate the status of husband and wife is not a dissolution or annulment for purposes of this section.

(d) This section applies to any California statutory will, without regard to the time when the will was executed, but this section does not apply to any case where the final judgment of dissolution or annulment of marriage occurs before January 1, 1985; and, if the final judgment of dissolution or annulment of marriage occurs before January 1, 1985, the case is governed by the law that applied prior to January 1, 1985.