

NOTHING HEREIN SHALL BE CONSTRUED AS LEGAL ADVICE OR FORM AN ATTORNEY-CLIENT RELATIONSHIP. THIS DOCUMENT IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY AND THE READER ASSUMES ALL RISK OF LOSS. THE FORMS DISCUSSED BELOW ARE FOR VERY BASIC SITUATIONS AND ARE NOT APPROPRIATE FOR THOSE WITH COMPLEX SITUATIONS OR SUBSTANTIAL WEALTH. YOUR CONTINUING TO READ THIS DOCUMENT INDICATES YOUR AGREEMENT WITH THESE TERMS.

## How To Create A Holographic Will And Guide To Free California Forms

If you have a very simple situation or you just need something on a temporary basis you can create your own Will. This is called a Holographic Will and it is totally legitimate in California.

California Probate Code Sec. 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.**

That means it will be valid if you write it out **in your own handwriting, sign and date it!** Then scan it or take a picture of it on your phone for safekeeping. Examples ...

"I, \_\_\_\_\_ of \_\_\_\_\_ County, California, declare this to be my holographic Will. I revoke all Wills I have previously made. I nominate \_\_\_\_\_ as the Executor of my Will to serve without the requirement of a bond\*. I give my estate to the following \_\_\_\_\_.

DATED: \_\_\_\_\_, 2016 \_\_\_\_\_ "- SIGNATURE

**OR**

"I, \_\_\_\_\_ of \_\_\_\_\_ County, California, declare this to be my holographic Will. I revoke all Wills I have previously made. I am married to \_\_\_\_\_ who I nominate as the Executor of my Will and if they are not able to serve I nominate \_\_\_\_\_ as the Executor of my Will both without the requirement of a bond\*. I have \_\_\_ (#) minor children named: \_\_\_\_\_ and if my spouse does not survive me I nominate \_\_\_\_\_ as the Guardian of my children. I give the entirety of my estate to my spouse, and if they predeceases me, the Executor shall hold the estate in Trust for the benefit of my children until the youngest has turned age 25, at which time it shall be distributed to my children in equal shares. While the Trust is in effect the Executor may make regular distributions for our childrens' support. DATED: \_\_\_\_\_, 2016 \_\_\_\_\_ "- SIGNATURE

*\*Bond should only be waived if the Executor is financially stable and very trustworthy*

### **Another approach... California Free Forms.**

The Estate Planning Section of the State Bar has long worked with legislators to provide free estate planning forms to California residents.

These forms are part of the Probate Code and there is a Statutory Will, Uniform Statutory Durable Power of Attorney and Advanced Health Directive. All you need to do is print them out and fill in the blanks.

Is it OK to use a free form for something as important as your Estate Plan? If you have a relatively simple and straightforward situation probably yes. These are the same forms that most Estate Planning attorneys use, except for the Statutory Will which contains a lot of instructions and can lead to confusion - but these forms WILL work and you should be able to figure it out.

As with the Holographic Will above, if your situation is complicated or if you have substantial wealth, you need professional advice.

I have attached the forms and some commentary and instructions. You can also find fillable forms online.

#### **FORM 1 - THE ADVANCED HEALTHCARE DIRECTIVE - INSTRUCTIONS**

- (1.1) **DESIGNATION OF AGENT:** This is the person who will communicate with your doctors.
- (1.2) **AGENT'S AUTHORITY:** If you have specific instructions you can list them here.
- (1.3) **WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE:** Check the box if you want your agent to have immediate access to your doctors and records.
- (1.5) **AGENT'S POSTDEATH AUTHORITY / FUNERAL AND BURIAL:** Fill in any funeral instructions or if you want to be cremated.
- (2.1) **END-OF-LIFE DECISIONS:** This is NOT a DNR. If you check "Not To Prolong" and then have to call 911 they will come out and resuscitate you. This just begins the process and a protocols and discussions with family members that would be necessary to eventually take you off life support.
- (2.2) **RELIEF FROM PAIN:** This is really about hospice where large amounts of painkillers are used to bring about a quicker (but less painful) death.
- (2.3) **OTHER WISHES:** Another spot to express your additional wishes.
- (3.1) **DONATION OF ORGANS AT DEATH:** Even if you do not check this your family members will likely be pressured to donate.
- (4.1) **PRIMARY PHYSICIAN:** If you really like your primary physician go ahead and list them. But if you are in between or do not have a good relationship with them do not worry about this.

Must be notarized to be effective.

#### **FORM FOLLOWS**

# **ADVANCED HEALTHCARE DIRECTIVE**

## **WARNING TO PERSON EXECUTING THIS DOCUMENT**

**This is an important legal document. Before executing this document, you should know these important facts:**

**This document gives the person you designate as your agent (the attorney-in-fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known. Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive. Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped or withheld if you object at the time.**

**This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of your desires and any limitations that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent (1) authorizes anything that is illegal, (2) acts contrary to your known desires, or (3) where your desires are not known, does anything that is clearly contrary to your best interests.**

**This power will exist for an indefinite period of time unless you limit its duration in this document. You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation. Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document. Unless you otherwise specify in this document, this document gives your agent the power after you die to (1) authorize an autopsy, (2) donate your body or parts thereof for transplant or therapeutic or educational or scientific purposes, and (3) direct the disposition of your remains. If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. The printed form described in subdivision (a) shall also include the following notice: "This power of attorney will not be valid for making health care decisions unless it is either (1) signed by two qualified adult witnesses who are present when you sign or acknowledge your signature or (2) acknowledged before a notary public in California." (c) This section does not apply to the statutory form provided by Section 4771.**

**PART 1**  
**POWER OF ATTORNEY FOR HEALTH CARE**

(1.1) **DESIGNATION OF AGENT:** I, \_\_\_\_\_ **(PRINT YOUR NAME)** designate the following individual as my agent to make health care decisions for me:

\_\_\_\_\_  
(name of individual you choose as agent)

\_\_\_\_\_  
(address) (city) (state) (ZIP Code)

\_\_\_\_\_  
(home phone) (work phone)

**OPTIONAL:** If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent:

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address) (city) (state) (ZIP Code)

\_\_\_\_\_  
(home phone) (work phone)

(1.2) **AGENT'S AUTHORITY:** My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

\_\_\_\_\_  
(Add additional sheets if needed.)

(1.3) **WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE:** My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box (\_\_\_), my agent's authority to make health care decisions for me takes effect immediately.

(1.4) **AGENT'S OBLIGATION:** My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(1.5) **AGENT'S POSTDEATH AUTHORITY / FUNERAL AND BURIAL:** My agent is authorized to make anatomical gifts, authorize an autopsy, and direct disposition of my remains, except as I state here or in Part 3 of this form: \_\_\_\_\_

(1.6) **NOMINATION OF CONSERVATOR:** If a conservator of my person needs to be appointed for me by a court, I nominate the agent designated in this form in the order listed.

**PART 2  
INSTRUCTIONS FOR HEALTH CARE**

If you fill out this part of the form, you may strike any wording you do not want.

(2.1) **END-OF-LIFE DECISIONS:** I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

(a) **Choice Not To Prolong Life**

I do not want my life to be prolonged if (1) I have an incurable and irreversible condition that will result in my death within a relatively short time, (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, (3) the likely risks and burdens of treatment would outweigh the expected benefits, (4) I become subject to a persistent vegetative state and I am not able to have meaningful interaction with friends or family, or (5) I suffer from persistent severe dementia and there is no reasonable chance for recovery from such state.

OR

(b) **Choice To Prolong Life**

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(2.2) **RELIEF FROM PAIN:** Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

(2.3) **OTHER WISHES:** (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that: \_\_\_\_\_

**PART 3  
DONATION OF ORGANS AT DEATH (OPTIONAL)**

(3.1) Upon my death (mark applicable box):

(a) I give any needed organs, tissues, or parts, OR

[\_] (b) I give the following organs, tissues, or parts only.

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(c) My gift is for the following purposes (strike any of the following you do not want):  
(1) Transplant: (2) Therapy; (3) Research: (4) Education

**PART 4  
PRIMARY PHYSICIAN (OPTIONAL)**

(4.1) I designate the following physician as my primary physician:

\_\_\_\_\_  
(name of physician) (Phone)

\_\_\_\_\_  
(address) (city) (state) (ZIP Code)

**PART 5**

(5.1) **EFFECT OF COPY:** A copy of this form has the same effect as the original.

(5.2) **SIGNATURE:** Sign and date the form here: DATED: \_\_\_\_\_, 2016

\_\_\_\_\_  
SIGNATURE

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

**CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC**

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 201\_\_ before me, \_\_\_\_\_ -  
NOTARY PUBLIC, personally appeared \_\_\_\_\_, WHO proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument described as ADVANCE HEALTH CARE DIRECTIVE and acknowledged to me that she / he executed the same in her / his authorized capacity, and that by her / his signature on the instrument the person executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(seal)

\_\_\_\_\_  
- NOTARY PUBLIC

## **FORM 2 CALIFORNIA STATUTORY DURABLE POWER OF ATTORNEY - INSTRUCTIONS**

This is a pretty serious form. If you do not completely trust the person you are nominating you should NOT use this form. It is also possible to have a durable power of attorney that "springs" into action when you are determined to be incapacitated but that is probably beyond the scope of a simple do-it-yourself plan.

Generally we just "Initial" at line (N) ALL OF THE POWERS LISTED ABOVE but you can certainly limit it to any of the various options.

Must be notarized to be effective.

**FORM FOLLOWS**



**CALIFORNIA STATUTORY DURABLE POWER OF ATTORNEY**

**NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA PROBATE CODE SECTIONS 4400-4465). IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.**

**I, \_\_\_\_\_ (PRINT NAME), a resident of \_\_\_\_\_ County, California, I DO HEREBY APPOINT \_\_\_\_\_ AND IF THEY ARE NOT WILLING OR ABLE THEN \_\_\_\_\_ AS MY TRUE AND LAWFUL ATTORNEY-IN-FACT (MY "AGENT") TO TAKE THE FOLLOWING ACTIONS FOR ME, AND IN MY NAME, PLACE, AND STEAD:**

**TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS. TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING. TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.**

**INITIAL**

- \_\_\_\_\_ (A) Real property transactions.
- \_\_\_\_\_ (B) Tangible personal property transactions.
- \_\_\_\_\_ (C) Stock and bond transactions.
- \_\_\_\_\_ (D) Commodity and option transactions.
- \_\_\_\_\_ (E) Banking and other financial institution transactions.
- \_\_\_\_\_ (F) Business operating transactions.
- \_\_\_\_\_ (G) Insurance and annuity transactions.
- \_\_\_\_\_ (H) Estate, trust, and other beneficiary transactions.
- \_\_\_\_\_ (I) Claims and litigation.
- \_\_\_\_\_ (J) Personal and family maintenance.
- \_\_\_\_\_ (K) Benefits from social security, medicare, medicaid, or other governmental programs, or civil or military service.
- \_\_\_\_\_ (L) Retirement plan transactions.
- \_\_\_\_\_ (M) Tax matters.
- \_\_\_\_\_ **(N) ALL OF THE POWERS LISTED ABOVE.**

**YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N). ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT:**

**UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.**

**This power of attorney will continue to be effective even though I become incapacitated.**

**I agree that any third party who receives a copy of this document may act under it. I agree to**

indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed: \_\_\_\_\_, 2016

IN WITNESS WHEREOF, the principal has signed this durable power of attorney on \_\_\_\_\_, 2016 at \_\_\_\_\_ (CITY), California.

\_\_\_\_\_  
SIGNATURE

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

**NOTARY ACKNOWLEDGEMENT**

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 201\_\_ before me \_\_\_\_\_ - NOTARY PUBLIC, personally appeared \_\_\_\_\_, WHO proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument described as CALIFORNIA STATUTORY DURABLE POWER OF ATTORNEY and acknowledged to me that she / he executed the same in her / his authorized capacity, and that by her / his signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

**I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.**

WITNESS my hand and official seal.

**(SEAL)**

\_\_\_\_\_  
- NOTARY PUBLIC

## **FORM 3 - THE CALIFORNIA STATUTORY WILL**

If you find this form confusing then just create a holographic will instead. The problem with this type of Will is that it involves "asset identification". It starts off identifying who gets your house (which is probably your biggest asset), then your car, personal items, cash gifts etc., and then identify who gets the remainder.

I can understand why they chose to do it this way. This is how most people think about their estate plans before they have met with an attorney. However, if you have debts when you die this type of Will can be problematic because many of the gifts may not be able to be made and it just might not be possible to keep your house if you have a mortgage.

So think this through and decide if it makes sense for you. You can also just ignore Section 2, 3 and 4 and go straight to Section 5.

Section 6 is the nomination of Guardian which is very important if you have minor children.

Section 7 sets the age at which children would get access to funds. In most cases 18 is too young. Age 25 is a better option.

Section 9 gives you the option to waive the requirement of a bond. As discussed above, you should only waive bond if the Executor is financially stable and very trustworthy. Obtaining a bond is not that hard and provides a lot of protection as long as the Executor has decent credit and income.

The Statutory Will needs to be witnessed by 2 people who are not named in your Will.

**FORM POSTED AS SEPARATE DOCUMENT**