



# Types of Wills

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**A** will is used to designate how, when, and to whom your assets will pass at your death. In addition to naming an Executor or Executrix (sometimes called a Personal Representative) to collect and distribute your assets, your will is the document in which you name guardians for your minor children.

If you have a living trust, a pour over will is generally used so that at your death, the will “pours” any assets not in your living trust into the trust so the assets can be distributed according to the trust’s terms. There may or may not need to be a probate first depending on the amount of the assets.



## REQUIREMENTS OF A WILL

You can draft a typewritten will or have an attorney draft a will for you. In California, the requirements for a will to be legally effective are as follows:

- the testator must be 18 years or older;
- the testator must be of sound mind;
- the document must state that it is a will;
- it must be type-written or created and printed using a computer;
- you need to appoint at least one executor;
- the will must provide for the disposition of your assets;
- the will must be signed and have a date of execution; and
- two witnesses who are at least 18 years of age must be present when the testator signs the will.

These witnesses must also be of sound mind and understand they are witnesses for your will. The witnesses may not be beneficiaries of the will, and the witnesses must see the testator and the other witness sign your will.

## WHAT IS A HOLOGRAPHIC WILL?

A holographic will is a will that is handwritten by the testator (the person who

would like to leave property after his or her death). This type of will can range from simple to complex, and drafted with or without the assistance of an attorney. In California, the only requirements for a holographic will are that the will is handwritten by the testator, the testator signs the will (anywhere on the handwritten document), and the signature authenticates the will (i.e., it cannot be instructions for an attorney to later draft a will). Although a date is not necessary for a holographic will, the Testator should date the document.

## **WHY WOULD YOU WANT TO WRITE A HOLOGRAPHIC WILL?**

You may have wanted to visit an attorney for advice on drafting a will, but due to time or financial constraints, have not been able to do so. If you must go to the hospital unexpectedly, an attorney can dictate over the phone what to include in your holographic will. You can also draft your holographic will without the assistance of an attorney, and your wishes will be respected by a court of law.

## **WHY WOULD YOU NOT WANT TO WRITE A HOLOGRAPHIC WILL?**

Not all states recognize holographic wills as valid. Even states that do recognize holographic wills may restrict property that can be transferred by holographic will to personal property or to a small dollar value, such as \$500. Additionally, by only leaving a holographic will, your estate will have to be probated. The court ultimately decides whether the will is valid. If the will is not dated, it can easily be argued that it was written before another will was drafted, causing it to be invalidated. Even if the holographic will has a later date, some states do not allow holographic wills to revoke properly executed, typewritten wills. Before you decide to write a holographic will as your final draft, consult with an estate planning attorney to ensure your choices will be carried out in the way you intend.

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

Statutory wills are form wills you fill out to designate who will receive your assets. These forms are written by the state and forms can be purchased through the State Bar. While this may seem like a great idea, only four states recognize them as valid, namely California, Maine, Michigan, and Wisconsin. While the concept sounds very simple and user-friendly, your choice of recipients for your property can be very limited, making these statutory forms useless in many situations. Additionally, if you have a trust, statutory wills cannot pour over your assets to your trust. However, if you are leaving all your assets to your spouse or children, a statutory will may be a good choice. Check with your state to see if this form of document may be the right choice for you.

The requirements of a statutory will are similar to those of a will drafted by an attorney. Besides having to meet all the other requirements of a typewritten will, an additional requirement is that you should not edit, change, add, or delete words to the statutory will form.

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