



Advance Planning: Pro Bono Training Manual

California

March 2018

The information presented herein is intended for educational purposes only. This information is not intended as legal advice. This material may not address the specific needs, interests and circumstances of individual applicants, who are urged to seek individual advice concerning their Advance Planning. Your use of these materials creates no attorney client relationship between you and Bet Tzedek Legal Services.

Be advised that this sample is prepared under the laws of the State of California. If serving clients in a different jurisdiction, you must use the instruments appropriate to that jurisdiction. To the best of our knowledge the information presented herein is correct as of the date of this document. Subsequent changes in the law or in the policies or practices in the State of California could affect its validity.

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Dear Volunteer,

I would like to offer my appreciation and thanks for your service in our program to offer free legal assistance to low-income older adults.

Bet Tzedek is focused on the integration of “person-centered, trauma-informed” (“PCTI”) best practices in legal services. We recognize that many members of the vulnerable populations we serve have suffered trauma in the past.

Person-Centered legal practice is a collaborative partnership that combines the expertise of attorney and client, prioritizing the client as decision-maker and taking non-legal aspects of clients’ lives into account. Trauma informed legal service acknowledges trauma’s continuing impact on a person, adjusts the attorney-client relationship and legal strategy, and strives to prevent retraumatization.

Our goal is to improve client-advocate relationships and outcomes, and to educate legal professionals in PCTI best practices to enhance advocates’ abilities to effectively serve clients who may have suffered trauma in the past.

We are excited to have you working with us to provide necessary Advance Planning instruments for this vulnerable population. If you have any questions or concerns, or would like any further information about this program, or other programs offered by Bet Tzedek, please do not hesitate to contact our office.

Cordially,

**Molly N. Meltzer, Esq.
Director, Pro Bono Programs**

A Note on Best Practices and PCTI Legal Services

Bet Tzedek strives to incorporate person-centered, trauma-informed (“PCTI”) best practices into the provision of free legal services to all of our clients. PCTI care is a holistic service approach that recognizes the impact that trauma continues to have on trauma survivors’ lives. Through this manual, you will find **helpful PCTI and practice tips**.

Approximately 70% of the adult population in the U.S. has experienced at least one traumatic event in their lifetimes, making the likelihood of needing to engage in trauma-informed services higher than one might think. PCTI legal services don’t follow a prescribed formula, but rather apply characteristics that are “intrinsic to all positive human relationships: empathy, responsive listening, restraint from judgment, [and] demonstration of authentic care and concern.”¹

One very prevalent traumatic event is living below the poverty line. Living in poverty often means encountering multiple traumas over many years, including toxic and chronic stress, scarcity, conflict, and even violence. In addition, the daily, chronic pressures of living in poverty can make one vulnerable to becoming socially isolated, particularly later in life. Past traumatic experiences can prove particularly difficult for older adults, as events of later life may awaken long-suppressed memories and feelings and yield emotional or behavioral problems. Finally, individuals living in poverty are less likely to have access to resources that may facilitate the successful negotiation of their traumatic experiences throughout life.

During your interactions with clients to complete advance planning documents, you will not be able to learn the client’s complete life story or discuss traumas they may have suffered, which is precisely why it is so important to be aware of how trauma and past experiences can manifest. There are a few things attorneys should keep in mind when working with potential victims of trauma:

- ❖ Remembering that the client’s actions may be a response to past trauma, and not a character or personality flaw;
- ❖ Taking the time to establish trust and rapport with the client;
- ❖ Working collaboratively and prioritizing the client as the decision-maker; and
- ❖ Using an empathetic approach to providing legal services- adjusting to the client’s needs as necessary and not simply “going through the motions.”

¹ Kraemer & Patten, Establishing a Trauma-Informed Lawyer-Client Relationship, 2014.

CHAPTER 1

Introduction to Advance Planning Documents

Advance Planning Documents

Advance Planning is immensely important to every adult, but exponentially so to elder adults.

The two Advance Planning instruments utilized by the Advance Planning clinic are **Advance Health Care Directives** (also commonly known as a Power of Attorney for Healthcare) and **California Statutory Wills**.

- **Advance Health Care Directive**

- An Advance Health Care Directive is a legal document that allows individuals to make decisions about health care treatment in the future and/or to designate an agent to make decisions for them if they lose capacity and are unable to make their own decisions.
- There are two components to the Advance Health Care Directive:
 - The appointment of an agent and two alternate agents
 - Instructions regarding health care treatment preferences

- **Statutory Will**

- A Will is a legal document—drafted and executed in compliance with state law—that distributes assets in accordance with an individual’s wishes and becomes irrevocable upon death. In a Will, a person can name a beneficiary to receive assets, an executor to distribute assets, and nominate a guardian for minor children if the client has children under 18 years of age.
- The California Statutory Will is a “fill in the blanks” form. The language of the Statutory Will is provided directly in the California Probate Code. It is designed to provide clear, simple instructions for distributing a client’s assets at death. The options for distributing assets are limited in a Statutory Will, so it may not be appropriate for complex or highly valued estates, clients that want to leave detailed instructions, asset protection, or tax planning purposes.

OLDER ADULTS AND ADVANCE PLANNING

Low-income older adults as a community may avoid Advance Planning for a number of reasons, including:

- ▶ reticence to disclose personal and/or financial information,
- ▶ not wanting to burden children or family,
- ▶ avoiding thinking about mortality

A Note on Capacity

A short discussion on capacity is necessary here, as many clinic clients have reached an advanced age and some may be suffering from the debilitating effects of dementia and Alzheimer's Disease.

Working with a client who has diminished capacity is a challenging aspect of providing legal services for seniors. Attorney ethical rules make it clear that attorneys are required to do their best to represent clients with cognitive disabilities as they would any other client, and maintain as normal an attorney-client relationship as possible².

Due Process in Competency Determinations Act³

Under California law, a diagnosis of a disorder such as Alzheimer's Disease or dementia does not mean a person is determined to lack capacity. A rebuttable presumption exists that all persons have the capacity to make decisions and to be responsible for their acts or decisions, meaning *a determination of lack of capacity must be based on evidence of a deficit*. A person with a physical or mental disorder may still be capable of performing a variety of actions with legal consequences.

- Capacity is a fluid concept. Generally, the amount of capacity needed depends on the gravity and sophistication of the decision at hand.

Capacity Standards: California law creates capacity standards for particular decisions

- Advance Health Care Directive: To complete an advance directive, a client must be able to understand the nature and consequences of the document, make and communicate a decision, and express a reasoned preference for the agent he or she appoints (i.e. "Mary has always helped me talk to my doctors and make medical decisions, I want her to be able to keep helping me in the future")⁴.
- Will: To execute a will, a client must understand the nature of the testamentary act. In short, your client must understand what they own and to whom they wish to leave it.⁵

PRACTICE TIP

Face to face interaction is very important when determining whether capacity is an issue.

Ask the client to articulate why they want legal help, as well as simple biographical questions; information about their living situation, family, and finances.

Sometimes multiple meetings are necessary, as is working with family members or friends to learn about the client's function and confirm the correctness of information (so long as the client consents).

Keep careful notes of your interactions with a client who may have questionable capacity. Note their answers to your questions and your impressions of their ability to communicate and express preferences.

² See Model Rules of Professional Conduct R. 1.14 (1983)

³ CA Probate Code §§810-813

⁴ CA Probate Code §4609

⁵ CA Probate Code §6100.5

CHAPTER 2

Completing the Advance Health Care Directive

What is an Advance Health Care Directive?

An Advance Health Care Directive is a legal document that allows individuals to make decisions about health care treatment in the event they lose capacity and are no longer able to make their own decisions. In California, this document is governed by California Probate Code §§4670-4678.

An Advance Health Care Directive is also known as a “California Power of Attorney for Health Care and Health Care Instruction form,” “Durable Power of Attorney for Health Care,” “Advance Health Care Directive,” or “Living Will.”

There are two components to the Advance Health Care Directive:

Part 1: The appointment of an agent and two alternative agents

Part 2: Instructions regarding health care treatment preferences

How long does the Advance Health Care Directive last?

- ❖ The Advance Health Care Directive is valid forever, unless it is revoked or the client sets a date for it to expire. The client may revoke, or make ineffective, the Advance Health Care Directive at any time by communicating the intent to revoke.⁶
- ❖ The client should inform all agents and health care providers of any changes. Signing a new Advance Health Care Directive form will also revoke any previous Advance Health Care Directive.
- ❖ If the client executed an Advance Health Care Directive before 1992, it may no longer be valid. Prior to a change in the law in 1992, Advance Health Care Directives were generally only valid for 7 years. The client should execute a new Advance Health Care Directive. If the client has a valid Advance Health Care Directive, then the client does not need to fill out a new form, unless he or she wishes to invalidate the old Advance Health Care Directive.

⁶ Communicating the intent to revoke includes telling a health care provider, signing a revocation, or tearing up the Advance Health Care Directive. CA Probate Code §4695.

PROVIDING A SENSE
OF AGENCY IN
FUTURE MEDICAL
CARE

Advance Health Care Directives:

- ▶ Give a client's decision priority;
- ▶ Are especially important in contemplation of desired end-of-life care, or lack thereof;
- ▶ Protect the dignity and wishes of clients who are no longer able to make decisions for themselves;
- ▶ Potentially prevent the need for the costly, invasive, and time-consuming process of a conservatorship;
- ▶ Help to avoid institutionalization.

Who decides when someone is unable to make health care decisions?

- ❖ The client's primary care physician will determine when the client is unable to make decisions regarding his or her health care.
- ❖ The primary care physician should provide a statement to this effect in writing.
- ❖ If the client prefers for somebody other than his or her primary care physician to make this decision, the client may provide these instructions on the Advance Health Care Directive.

Part 1: Appointing a Health Care Agent

In Part 1 of the Advance Health Care Directive, the client may appoint another person to be his or her health care "agent." The agent will have legal authority to make decisions about the client's medical care if the client becomes unable to make decisions for himself or herself.

Agent Requirements

- ❖ Any adult over the age of 18 who is not the client's physician or an employee of a health care facility where the client receives care can be health care agent.
- ❖ The person should be trusted by the client and should know the client's personal values and beliefs.
- ❖ Typical agents include spouses, partners, children, other family members, and close friends.

Alternative Agents

It is recommended that the client appoint two "alternate agents" in case the primary agent is unavailable or unwilling to make a decision at the appropriate time. The alternate agents should be chosen with the same considerations in mind as when choosing the primary agent.

AGENT'S AUTHORITY

- ▶ An Agent's authority can be limited if specified in the Advance Health Care Directive.
- ▶ Any of the provided powers can be removed by striking through them on the instrument.
- ▶ Additional powers can be written into the provided blanks.

Agent's Authority

The agent's authority typically begins if and when it is determined that the client is unable to make health care decisions for himself or herself (unless the directive specifies otherwise). Physicians and health care professionals will look to the client's agent for decisions instead of the client's next of kin. The agent's authority includes:

Subject to any limitations in the document, an agent may make health care decisions for the principal to the same extent the principal could make health care decisions for themselves if they had capacity to do so. See CA Probate Code §4683

AN AGENT MAY:

- ▶ Accept or refuse treatment;
- ▶ Access medical records;
- ▶ Choose a doctor;
- ▶ Donate organs; and
- ▶ Make funeral arrangements after death.

See CA Probate Code §§4615, 4617

AN AGENT MAY NOT:

- ▶ Place principal in a mental health treatment facility;
- ▶ Authorize convulsive treatment, psychosurgery, sterilization, or an abortion; or
- ▶ Authorize assisted suicide or euthanasia.

See CA Probate Code §4652

Agent's Legal Obligations

The agent must follow all the instructions and wishes of the client to the best of his or her knowledge. Because of this, it is in the client's best interests to communicate his or her beliefs, wishes, and instructions to his or her agent upon appointing that person these responsibilities. The agent is generally immune from liability as long as the agent acts in good faith.

A person designated as agent does not have a duty to act, nor does acting for the principal in one or more transactions obligate the agent to act in a subsequent transaction. See CA Probate Code §4230

Agent's Financial Obligations and Liabilities

Agents are generally not subject to civil or criminal liability for health care decisions made in good faith.⁷ The agent is also generally not responsible for medical expenses of the principal.

Part 2: Health Care Instructions

In Part 2 of the Advance Health Care Directive, the client may write down his or her health care wishes or instructions to their agent, or if there is no agent or the agent is unwilling or unable to perform his or her duties, to their health care provider. Health care instructions provide clear guidelines for the agent or health care provider.

There are two standard end-of-life health care instructions that the client may choose. These instructions are as follows:

- ❖ I do not want efforts made to prolong my life and I do not want life-sustaining treatment to be provided or continued:
 1. If I am in an irreversible coma or persistent vegetative state; or
 2. If I am terminally ill and the use of life sustaining procedures would serve only to artificially delay the moment of my death; or
 3. Under any other circumstances where the burdens of treatment outweigh the expected benefits.In making decisions about life sustaining treatment under (3) above, I want my agent or health care provider to consider the relief of suffering and the quality of my life as well as the extent of the possible prolongation of my life.
- ❖ I authorize all treatments to prolong my life for as long as possible

The client may also include his or her own individual instructions on the form. If the instructions are detailed and will take up more room than the allotted space allows, the client may attach one or more sheets of paper with written instructions to the form, number each page, and sign and date each page at the same time the form is witnessed or notarized. Be sure to advise your client that adding instructions to the document may help their agent to carry out their wishes, but it is important to leave clear instructions and be careful not to unintentionally restrict the agent's power to act in the client's best interest. Many clients choose to leave no additional instructions. Whether or not the client leaves specific instructions, it is important to stress the importance of having a discussion with the agent about the client's wishes.

⁷ CA Probate Code §4741.

Some considerations for this section may include:

1. Whether the client would like to donate any or all of his or her organs for the purposes of transplantations, research, education, or therapy;
2. Whether the client would prefer to receive end-of-life treatment at home, in a hospital, or in a nursing home; and
3. Whether the client has religious instructions regarding health care or post-death decisions.

Validity of the Advance Health Care Directive

The Advance Health Care Directive that a client signs in California is valid in California. Other states may not recognize a legally executed California Advance Health Care Directive. However, California does recognize legally executed Advance Health Care Directives and Powers of Attorney for Health Care from other states.

Executing an Advance Health Care Directive

The client must sign and date the Advance Health Care Directive. The document must also be either notarized or witnessed by two individuals. A witness cannot be:

- a person designated as an agent,
- the client's health care provider,
- employees of the client's health care provider, or
- employees of the client's community or residential care facility.⁸

If the client is currently residing in a nursing facility, a representative of California's Long-Term Care Ombudsman Program must also be a witness.⁹

Effect on Emergency Medical Personnel

The Advance Health Care Directive does not have legal effect on emergency medical personnel. To stop paramedics from giving CPR, the client must do two things:

TO MAKE A VALID ADVANCE HEALTH CARE DIRECTIVE:

The principal must be:

- ▶ A California resident;
- ▶ Is at least 18 years old (or an emancipated minor);
- ▶ Is of sound mind; and
- ▶ Is acting of his or her own free will

⁸ CA Probate Code §4674

⁹ CA Probate Code §4675.

1. Complete a “Prehospital Do Not Resuscitate (DNR)” or a “Physician’s Orders for Life-Sustaining Treatment (POLST).”
2. Have available a “Do Not Resuscitate – EMS” medallion, the white copy of the “Prehospital Do Not Resuscitate” form, or the pink copy of the POLST form.

It is important to note that the POLST form must be completed by a client and his or her health care provider, and cannot be executed by a legal service provider. To learn more about the POLST forms, visit www.capolst.org

Meeting with the Client (Person-Centered, Trauma-Informed Legal Services)

- ❖ Be sensitive, patient, and understanding with each client. This process can be difficult for any client, but especially so with victims of trauma. Involve your client in the process by laying out a roadmap of what will take place during the meeting and making sure your client is comfortable with it, pay attention to changes in body language and pause and check in with your client.
- ❖ Read each section of the document as you review it with the client. Work with the client to clearly understand his or her health care goals and wishes.
- ❖ Ask the client if the client has talked with his or her primary care physician or family member(s) about his or her health care decisions. Make sure the client understands the importance of informing his or her doctor, agent(s), and family about his or her health care wishes.
- ❖ Complete avoidance or “sugar-coating” of difficult issues (e.g. end-of-life medical care) is not necessarily the best approach. It is important to foster legal services to the client’s circumstances, not just the approach.

An example: Judith came to complete an AHCD, but during the meeting when specific end-of life health care instructions came up, she stopped the attorney and said she did not want complete the document at all. Rather than abandoning the process or pushing Judith to make choices she was not ready for, her attorney explained that Judith did not have to make the health care instruction if she was not ready, and Judith decided to move forward and complete the document with only the agent appointment. Her attorney encouraged Judith to have a later conversation with her agent regarding her health care wishes and offered to facilitate.

THIRD-PERSONS IN ADVANCE PLANNING MEETING

Often, family members or other third-persons will want to be part of the Advance Planning meeting, and the client may wish for a third-person to attend.

▶ The initial meeting should be held between only the attorney and the client.

▶ The presence of a third-party during the Advance Planning meeting would defeat Attorney-Client privilege.

▶ It is necessary to speak with the client alone in order to establish their wishes, such as the choice of beneficiaries, executor, and agent, in order to protect from undue influence and elder financial abuse.

Client responsibilities before completing the AHCD

- ❖ Think carefully about the decisions that he or she wants to make.
- ❖ Choose agents whom he or she can trust to make decisions in accordance with personal values.
- ❖ Have all agents' contact information, including names, addresses, and phone numbers, ready.

Client responsibilities after completing the AHCD

- ❖ Make his or her personal wishes and values known to agents, family members, and health care providers.
- ❖ Provide copies of the Advance Health Care Directive to agents, family members, and health care providers. Keep a list of every person and facility that has a copy. Give the agent a copy of the Agent Information sheet and review the Principal Information sheet.
- ❖ Keep a wallet card with the agent's information.
- ❖ If the client is going to be admitted to the hospital, nursing home, or other facility, the client should take a copy of the Directive.

The Advocate as Facilitator

If the client appoints an agent(s), one of the most important aspects of an Advance Health Care Directive is the conversations it should trigger between the client and their agent regarding end-of-life care, including topics ranging from what types of interventions the client would want or not want, to what makes life worth living. These conversations are tough, and though most people agree that speaking with their loved ones about end of life care is important, only a small percentage actually do so.

Many clients hesitate to initiate this conversation because they do not wish to burden their agent. As an advocate, it is important to encourage the discussion and explain to the client that far from adding to it, talking about end-of-life wishes actually relieves the agent's burden by preparing and empowering them to make informed decisions on the client's behalf.

If you are meeting with both the client and the agent, the simple act of speaking with them together at the end of the meeting and encouraging them to "have the talk" can make an enormous difference. If it something you are comfortable with, you may also offer to facilitate the conversation.

PRACTICE TIP

If a client has a smart phone or a camera phone, suggest that they take a picture of each page of their Advance Health Care Directive.

They can also text or e-mail the pictures to their agent.

The client and their agent will then have a copy of the AHCD form with them at all times, instead of trying to hunt for the form in an emergency.

Filling out the Form Part 1: Naming Your Agent

Please Note: The images included in this manual come from the Advance Health Care Directive provided by Bet Tzedek. Other California Health Care Directive exemplars may differ in appearance, but should be similar in substance.

Before naming the agent, you begin the form by filling in your client's name. It is always good practice to look at either a state issued ID or passport and use that spelling or version of the client's name. The form also includes an additional line for any "also known as/formerly known as" for clients who have used a different name in their medical history or have had a legal name change, or have used a different spelling or version of their name in the past.

In addition, Bet Tzedek's AHCD provides an option to make the document immediately effective. This means an agent can step in to act for the principal at any time, without the need to involve a doctor in the question of whether or not the AHCD should take effect. For the majority of clients this is not necessary, but should the client have the need for immediate help managing their medical care they may choose to initial in the box provided.

My name is: _____ .

also known as/formerly known as: _____ .

In this document I appoint an agent. That agent will make health care decisions for me in the future, if and when I no longer have the capacity to make my own health care decisions. My primary care physician will determine when I am unable to make my own health care decisions.

OPTIONAL: I want my agent's authority to make health care decisions for me to take effect immediately.

Initial here if this statement reflects your desires:

☐

Note that making the document effective immediately does not give the agent the authority to override the principal's wishes in terms of treatment; the principal will always be able to dictate their own medical care so long as they have the ability to do so.

STEP 1: Agent

Enter the name, address, phone number(s), and email address of the client's agent.

Part 1 - NAMING YOUR AGENT (If you do not have an agent, please proceed to Part 2 on page 3.)

Do not select any of the following persons as your agent or alternate agent:

- *Your primary physician.*
- *An employee or operator of the health care institution, community care facility, or residential care facility where you receive care (unless you are related to that person).*

AGENT

Name: _____

Address: _____
City State Zip

Phone: () Alt. Phone: () Email: _____

STEP 2: Alternate Agent(s)

If the client wishes to appoint a first or a first and second alternate agent, enter the name, address, phone number(s), and email address of the client's alternate agent(s).

1ST ALTERNATE AGENT (If Agent is not reasonably available to make a health care decision for me.)

Name: _____

Address: _____
City State Zip

Phone: () Alt. Phone: () Email: _____

STEP 3: Agent's Authority

The client should read this section carefully and **cross out** any responsibilities listed that the client does not wish the agent to have.

AGENT'S AUTHORITY

Except as limited by this document, my agent will have authority to make all health care decisions for me. This authority includes, but is not limited to, the authority 1) to accept or refuse treatment, nutrition and hydration, 2) to choose a particular physician or health care facility, and 3) to receive, or consent to the release of, medical information and records.

Agent's Post Death Authority: My agent is authorized to donate all or part of my body, to authorize an autopsy and/or determine the disposition of my remains. The agent's actions must be consistent with my will or trust, and with any arrangements which I have made. (Cross this out if you do not wish your agent to have this authority.)

Agent's Authority Under HIPAA & CMIA: My agent shall be my personal representative under HIPAA and legal representative under CMIA and shall have the same rights to inspect, obtain and disclose my protected health information as I have.

STEP 4: Agent's Obligations

This section simply notifies the agent of his or her responsibilities. There is nothing to complete or mark on this section.

AGENT'S OBLIGATIONS

1. My agent shall make decisions for me in accordance with this power of attorney, other instructions I make in this form and my personal wishes, to the extent my agent knows them. If my wishes on a subject are not known, my agent shall make health care decisions for me consistent 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 by my agent.
2. My agent shall provide a copy of this advance health care directive to any health care provider or facility that takes on responsibility for my care.

STEP 5: Nomination of Conservator

The court will order a conservatorship of the person for someone (“conservatee”) whose health is at risk because he or she cannot provide for his or her own food, shelter, and other basic needs. If the client wishes to nominate his or her agent for the judge to appoint as the conservator should this ever become necessary, the client should initial in the box. Note that the client does not consent to a conservatorship by initialing in the box.

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. If that agent is not willing, able or reasonably available to act as conservator, I nominate the alternate agents whom I have named, in the order designated.

Initial here if this statement reflects your desires:

☐

Filling out the Form Part 2: Health Care Instructions

In this section, the client should indicate his or her wishes for the agent, or for the health care professional in the event that the client has not named an agent or the agent is not reasonably available to perform his or her responsibilities.

If the client agrees with one of the listed instructions, the client should place his or her initials in the corresponding box. If the client does not agree with either of the two listed instructions or the client has additional instructions, then the client should list his or her specific instructions in the area reading, "Other instructions/authorizations."

If the instructions are detailed and will take up more than the allotted space allows, the client may attach one or more sheets of paper to the form, then write the instructions, number each page, and sign and date each page at the same time the form is witnessed or notarized.

Part 2 - HEALTH CARE INSTRUCTIONS I make the following health care instructions to my agent, or to my health care provider if my agent is not reasonably available or I do not have an agent:

I do not want efforts made to prolong my life and I do not want life-sustaining treatment to be provided or continued:

- (1) If I am in an irreversible coma or persistent vegetative state; or
- (2) if I am terminally ill and the use of life sustaining procedures would serve only to artificially delay the moment of my death; or
- (3) under any other circumstances where the burdens of treatment outweigh the expected benefits.

In making decisions about life sustaining treatment under (3) above, I want my agent or health care provider to consider the relief of suffering and the quality of my life as well as the extent of the possible prolongation of my life.

Initial here if this statement reflects your desires:

I authorize all treatments to prolong my life for as long as possible.

Initial here if this statement reflects your desires:

Other instructions/authorizations:

Filling out the Form: Execution

Step 1: Revocation of Previous Documents

By signing this document, the client is revoking any previously executed Power of Attorney for Health Care, Individual Care Instructions, or Natural Death Act Declaration.

If these previous documents exist, the client should update anyone who received a copy of the old documents, including family members, health care providers, and physicians, with the new Advance Health Care Directive.

REVOCATION OF PREVIOUS DOCUMENTS

I revoke any previously-executed Power of Attorney for Health Care, Individual Health Care Instruction, or Natural Death Act Declaration.

Step 2: Signature of Principal

The client should sign and date the document in the presence of either:

1. Two witnesses
2. A notary public.

If the client cannot sign the document himself or herself, the client can authorize someone else to sign the client's name in the client's presence.

SIGNATURE OF PRINCIPAL (Sign and date form here in front of witnesses or a notary.)

Date: _____ Signature: _____
(If principal is not physically able to sign, he or she can instruct another person to sign the principal's name, if signature is done in the principal's presence.)

STEP 3: Statement of Witnesses

If the client is having two witnesses, instead of a notary public, sign the form the witnesses should each print, sign, date, and provide an address.

One of the witnesses should sign the declaration stating that he or she is not a relative and is not receiving any part of the client's estate upon death.

First Witness: _____	
<i>Name (printed)</i>	<i>Signature</i>
Date: _____	Address: _____
	City State Zip
Second Witness: _____	
<i>Name (printed)</i>	<i>Signature</i>
Date: _____	Address: _____
	City State Zip
ONE OF THE PRECEDING WITNESSES ALSO MUST SIGN THE FOLLOWING DECLARATION:	
I further declare under penalty of perjury under the laws of California that I am not related to the individual executing this advance health care directive by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the individual's estate upon his or her death under a will now existing or by operation of law.	
Date: _____	Signature: _____

STEP 4: Declaration of Ombudsman Program Representative

If the client is currently residing in a nursing facility, a representative of California's Long-Term Care Ombudsman Program must also be a witness. The ombudsman may serve as one of the two required witnesses in the "Statement of Witnesses" section. If the client is having the document notarized and is not using witnesses, the ombudsman is serving as a separate witness.

DECLARATION OF OMBUDSMAN PROGRAM REPRESENTATIVE

(Required if person appointing the agent currently resides in a nursing facility.)

I declare under penalty of perjury under the laws of California that I am an ombudsman designated by the California Department of Aging and that I am serving as a witness as required by Section 4675 of the California Probate Code.

Date: _____ Signature: _____

STEP 5: Certificate of Acknowledgement of Notary Public

If two witnesses are not available, the client may instead have their signature witnessed in front of a notary public. If executing the document with a notary public, the notary public should fill out this section of the form and sign it. A notary public's signature is not necessary if two witnesses are available to witness the client sign the document.

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC (Not required if two-witness method is followed)

State of California, County of _____

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____,

personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed it in his/her authorized capacity and that by his/her signature on the instrument he/she executed the instrument.

WITNESS my hand and official seal.

Signature _____

Instructing the client on post-execution steps

- ❖ Remind the client to speak with his or her agent(s) about the Advance Health Care Directive. The client should tell his or her agent(s) about end-of-life health wishes and concerns, even if they are already specified on the form.
- ❖ Remind the client to provide his or her agent(s), primary care physician, and health care providers with a copy of the Advance Health Care Directive so that they may keep it on file. Copies of the Advance Health Care Directive are just as valid as the original.
- ❖ The client should maintain a log recording the names of people and institutions that have been provided with a copy of the client's Advance Health Care Directive. This log will assist the client in providing updated copies to the appropriate people if the client makes changes to the Advance Health Care Directive in the future.
- ❖ The client should keep a Wallet Card to alert medical personnel that the client has an Advance Health Care Directive and ensure the agent's contact information is readily available in case of emergency.
- ❖ The client should make at least 3 copies of the original.
 - One copy will remain in the client's Bet Tzedek file.
 - The client retains the other copies along with the original.
- ❖ Provide the client with copies of Bet Tzedek's **Agent Instructions** and **Principal Instructions** and remind them to review the Principal Instructions and provide the agent(s) with the Agent Instructions.
- ❖ Finally, ask the client if he or she has any further questions and let the client know that he or she can call Bet Tzedek at 323.939.0506 with questions that arise, or if the client would like to make changes to the document.

CALIFORNIA POWER OF ATTORNEY FOR HEALTH CARE AND HEALTH CARE DIRECTIVE

NOTE: COMPLETION OF THIS FORM IS ONLY THE FIRST STEP.

YOU SHOULD DISCUSS YOUR WISHES IN DETAIL WITH YOUR DESIGNATED AGENT(S).

• **WITH THIS FORM YOU MAY DO ANY OR ALL OF THE FOLLOWING:**

1. **NAME AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT.**
 2. **INSTRUCT DOCTORS AND OTHER HEALTH CARE PROFESSIONALS HOW YOU WOULD LIKE TO BE TREATED IF YOU ARE HURT OR SERIOUSLY ILL AND UNABLE TO TELL THEM YOUR WISHES.**
- **READ THE FORM CAREFULLY. CROSS OUT ANY PROVISION YOU DO NOT WANT.**
 - **THIS FORM REVOKES ANY PRIOR DIRECTIVES YOU HAVE MADE.**
 - **AFTER YOU COMPLETE THIS FORM SIGN AND DATE IT. TWO WITNESSES OR A NOTARY MUST ALSO SIGN AND DATE IT.**

My name is: _____

also known as/formerly known as: _____

In this document I appoint an agent. That agent will make health care decisions for me in the future, if and when I no longer have the capacity to make my own health care decisions. My primary care physician will determine when I am unable to make my own health care decisions.

OPTIONAL: I want my agent's authority to make health care decisions for me to take effect immediately.

Initial here if this statement reflects your desires:

☐

Part 1 - NAMING YOUR AGENT (If you do not have an agent, please proceed to Part 2 on page 3.)

Do not select any of the following persons as your agent or alternate agent:

- *Your primary physician.*
- *An employee or operator of the health care institution, community care facility, or residential care facility where you receive care (unless you are related to that person).*

AGENT

Name: _____

Address: _____
City State Zip

Phone: () Alt. Phone: () Email: _____

1ST ALTERNATE AGENT (If Agent is not reasonably available to make a health care decision for me.)

Name: _____

Address: _____
City State Zip

Phone: () Alt. Phone: () Email: _____

2ND ALTERNATE AGENT (If Agent and 1ST Alternate Agent is not reasonably available to make a health care decision for me.)

Name: _____

Address: _____
City State Zip

Phone: (____) _____ Alt. Phone: (____) _____ Email: _____

AGENT'S AUTHORITY

Except as limited by this document, my agent will have authority to make all health care decisions for me. This authority includes, but is not limited to, the authority 1) to accept or refuse treatment, nutrition and hydration, 2) to choose a particular physician or health care facility, and 3) to receive, or consent to the release of, medical information and records.

Agent's Post Death Authority: My agent is authorized to donate all or part of my body, to authorize an autopsy and/or determine the disposition of my remains. The agent's actions must be consistent with my will or trust, and with any arrangements which I have made. (Cross this out if you do not wish your agent to have this authority.)

Agent's Authority Under HIPAA & CMIA: My agent shall be my personal representative under HIPAA and legal representative under CMIA and shall have the same rights to inspect, obtain and disclose my protected health information as I have.

AGENT'S OBLIGATIONS

1. My agent shall make decisions for me in accordance with this power of attorney, other instructions I make in this form and my personal wishes, to the extent my agent knows them. If my wishes on a subject are not known, my agent shall make health care decisions for me consistent 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 by my agent.
2. My agent shall provide a copy of this advance health care directive to any health care provider or facility that takes on responsibility for my care.

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. If that agent is not willing, able or reasonably available to act as conservator, I nominate the alternate agents whom I have named, in the order designated.

Initial here if this statement reflects your desires: ☐

Part 2 - HEALTH CARE INSTRUCTIONS I make the following health care instructions to my agent, or to my health care provider if my agent is not reasonably available or I do not have an agent:

I do not want efforts made to prolong my life and I do not want life-sustaining treatment to be provided or continued:

- (1) If I am in an irreversible coma or persistent vegetative state; or
- (2) if I am terminally ill and the use of life sustaining procedures would serve only to artificially delay the moment of my death; or
- (3) under any other circumstances where the burdens of treatment outweigh the expected benefits.

In making decisions about life sustaining treatment under (3) above, I want my agent or health care provider to consider the relief of suffering and the quality of my life as well as the extent of the possible prolongation of my life.

Initial here if this statement reflects your desires:

I authorize all treatments to prolong my life for as long as possible.

Initial here if this statement reflects your desires:

Other instructions/authorizations:

REVOCATION OF PREVIOUS DOCUMENTS: I revoke any previously-executed Power of Attorney for Health Care, Individual Health Care Instruction, or Natural Death Act Declaration.

SIGNATURE OF PRINCIPAL (Sign and date form here in front of witnesses or a notary.)

Date: _____ Signature: _____

(If principal is not physically able to sign, he or she can instruct another person to sign the principal's name, if signature is done in the principal's presence.)

STATEMENT OF WITNESSES

This document must either be notarized, or signed by two witnesses. If the principal (the person appointing the agent) currently resides in a nursing facility, this document also must be witnessed by a representative of California's Long-Term Care Ombudsman Program. If the two-witness method is chosen, the Ombudsman Program representative may serve as one of the two witnesses, or may serve as a third witness. If the notarization method is chosen, the Ombudsman Program representative serves as a separate witness. Certain individuals cannot serve as witnesses. Those rules are set forth in the following witness statements.

I declare under penalty of perjury under the laws of California

- (1) that the individual who signed or acknowledged this advance health care directive is personally known to me, or that the individual's identity was proven to me by convincing evidence,
- (2) that the individual signed or acknowledged this advance directive in my presence,
- (3) that the individual appears to be of sound mind and under no duress, fraud, or undue influence,
- (4) that I am not a person appointed as agent by this advance directive, and
- (5) that I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

First Witness: _____

Name (printed)

Signature

Date: _____ Address: _____
City State Zip

Second Witness: _____

Name (printed)

Signature

Date: _____ Address: _____
City State Zip

ONE OF THE PRECEDING WITNESSES ALSO MUST SIGN THE FOLLOWING DECLARATION:

I further declare under penalty of perjury under the laws of California that **I am not related** to the individual executing this advance health care directive by blood, marriage, or adoption, and, to the best of my knowledge, **I am not entitled** to any part of the individual's estate upon his or her death under a will now existing or by operation of law.

Date: _____ Signature: _____

DECLARATION OF OMBUDSMAN PROGRAM REPRESENTATIVE

(Required if person appointing the agent currently resides in a nursing facility.)

I declare under penalty of perjury under the laws of California that I am an ombudsman designated by the California Department of Aging and that I am serving as a witness as required by Section 4675 of the California Probate Code.

Date: _____ Signature: _____

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC (Not required if two-witness method is followed.)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which the certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California, County of _____

On _____ before me, (name and title of officer) _____,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.

Signature _____

NOTE: USE OF THIS FORM IS NOT APPROPRIATE FOR EVERY PERSON OR EVERY SITUATION.

FOR MORE INFORMATION ABOUT POWERS OF ATTORNEY FOR HEALTH CARE, CONSULT WITH AN ATTORNEY.

Advance Health Care Directive: Agent Instructions

You have been named a health care agent. This means you have the ability to make health care decisions on someone's behalf should they become incapacitated. The person who gave you this authority is referred to as "the principal." If you are named as an alternate agent your authority will only begin if the primary agent is not available.

Your Authority:

Physicians and other health care professionals will look to you to make decisions on behalf of the principal, *your authority includes*:

- Speaking to doctors, including asking questions and receiving information
 - Accepting or refusing treatment
 - Choosing a doctor
 - Making funeral arrangements
 - Accessing medical records
 - Donating organs
- (See CA Probate Code §§ 4615, 4617)

Your authority is limited; the principal retains the right to make their own health care decisions so long as they are able to give informed consent (unless specifically provided in the AHCD). You must act in accordance with the wishes of the principal to the extent that they are known, and when they are unknown, you should make decisions on behalf of the principal in their best interest. In determining what is the principal's best interest, you should consider their personal values to the extent that you know them. *You do not have the authority to*:

- Place the principal in a mental health treatment facility
 - Authorize assisted suicide or euthanasia
 - Authorize convulsive treatment, psychosurgery, sterilization, or an abortion
- (See CA Probate Code §§ 4652)

As a health care agent, you do not have any authority to manage the financial affairs of the principal. Your authority is limited to health care decisions only. You will not be responsible for any medical bills incurred in the treatment of the principal.

Your Obligations:

You have been given a great responsibility and it is very important that you take the time to speak with the principal about their preferences for health care and what is important to them when choosing medical treatment, as well as review the Advance Health Care Directive for any instructions the principal has provided therein. You must follow all the instructions and wishes of the principal to the best of your knowledge. You are immune from liability as long as you act in good faith.

Important additional topics to discuss include:

- What is the principal's wish for end-of-life care? How does the principal feel about the use of life sustaining measures (for example, the use of a respirator or artificial nutrition) in the face of an irreversible coma or terminal illness?
- Does the principal have any religious instructions or preferences for the handling and disposition of their body?
- Has the principal made any burial arrangements? If they have already made arrangements, get all available information and keep it in a safe place to avoid confusion later. If the principal has expressed a wish to be buried, what appearance do they want to maintain (for example, dress, hairstyle/length, makeup, etc.)?
- Does the principal wish to donate their body? If the principal wishes to donate their body, it is important to make these arrangements before death.
- Does the principal have instructions regarding how they want to be addressed or referred to in medical care and post-death, including name and pronoun(s)?

What to do Next:

You should keep an easily accessible copy of the Advance Health Care Directive in case of a health care emergency. It would also be helpful for you to confirm with the principal that they have provided copies of the directive to their health care providers. In addition to keeping a paper copy of the Advance Health Care Directive, it is a good idea to keep an electronic copy so it is always with you. Scan it and email it to yourself or take a picture so it is always accessible should you need it. You need to be able to provide a copy of the directive in order to exercise your authority. If the principal has had a legal name and/or gender marker change, it may be helpful to have a copy of the court order to link the principal to health records under a previous legal name.

The information presented herein is intended for educational purposes only. This information is not intended as legal advice. Your use of these materials creates no attorney client relationship between you and Bet Tzedek Legal Services.

Advance Health Care Directive: Principal Instructions

You have completed an Advance Health Care Directive. This document will be valid for the rest of your life unless you revoke it or set a date for it to expire.

If you have designated an agent/s in your Advance Health Care Directive, it is very important for you to speak to your agent/s about your end-of-life health wishes and concerns, even if they are specified on the form. Make sure to take the time to sit down with your agent/s and discuss your preferences, make sure they understand your health care and end-of-life wishes, and are willing to accept this responsibility. Informing your agent of your preferences will help them make informed decisions on your behalf and feel confident in their actions.

Important additional topics to discuss include:

- What is your wish for end-of-life care? How do you feel about the use of life sustaining measures (for example, the use of a respirator or artificial nutrition) in the face of an irreversible coma or terminal illness?
- Do you have any religious instructions or preferences for the handling and disposition of your body?
- Have you made any burial arrangements? If you have already made arrangements, provide the agent with all available information to avoid confusion later. If you wish to be buried, what appearance do you want to maintain (for example, dress, hairstyle/length, makeup, etc.)?
- Do you wish to donate your body? If you wish to donate your body, it is important to make these arrangements before death.
- Do you have instructions regarding how you want to be addressed or referred to in medical care and post-death, including name and pronoun(s)?

Provide your agent/s, primary care physician, and other health care providers with a copy of the Advance Health Care Directive so they may keep it on file. Copies of the Advance Health Care Directive are just as valid as the original.

It is useful to maintain a list of the people and institutions that have been provided with copies of your Advance Health Care Directive. This will assist you in providing updates to the appropriate people should you make changes to your directive in the future.

You should keep a wallet card to alert medical personnel that you have an Advance Health Care Directive and to ensure your agent/s' contact information is readily accessible in case of emergency. Make sure to keep several copies of the Advance Health Care Directive along with the original, but note that if you need to make copies of the original, do not remove the staple.

If you have had a legal name and/or gender marker change, it may be helpful to give your agent a copy of the court order to link you to health records under a previous legal name.

Wallet cards for your convenience:

Important Notice to Emergency Medical Personnel	Important Notice to Emergency Medical Personnel
I, _____ (name/s) (date of birth)	I, _____ (name/s) (date of birth)
have executed an Advance Health Care Directive. If I am unable to make my own health care decisions, my designated agent has the legal authority to make those decisions on my behalf, including decisions concerning life sustaining treatment. In such an event, one of the persons listed on the reverse of this card should be contacted immediately, in the order listed.	have executed an Advance Health Care Directive. If I am unable to make my own health care decisions, my designated agent has the legal authority to make those decisions on my behalf, including decisions concerning life sustaining treatment. In such an event, one of the persons listed on the reverse of this card should be contacted immediately, in the order listed.
.....
1. Agent's Name: _____ Phone: _____ Alt. Ph./email: _____	1. Agent's Name: _____ Phone: _____ Alt. Ph./email: _____
2. Agent's Name: _____ Phone: _____ Alt. Ph./email: _____	2. Agent's Name: _____ Phone: _____ Alt. Ph./email: _____
3. Agent's Name: _____ Phone: _____ Alt. Ph./email: _____	3. Agent's Name: _____ Phone: _____ Alt. Ph./email: _____

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CHAPTER 3

Completing a California Statutory Will

Introduction to Wills

A Will is a legal document – drafted and executed in compliance with state law – that distributes assets in accordance with an individual’s wishes and becomes irrevocable upon death. In a Will, a person can name a beneficiary to receive assets, an executor to gather and manage assets, pay debts and claims, and distribute assets, and a guardian for minor children if the client has children under 18 years of age.

There are several different types of Wills permitted by the California Probate Code¹⁰, including Holographic Wills, Attorney-drafted Wills, and California Statutory Wills. All are valid if drafted and executed according to specific formalities and requirements.

Holographic Will

A Holographic Will is a Will completely in the client’s own handwriting.¹¹ A Holographic Will must be dated and signed; the handwriting must be legible; and it must be clear what the client is leaving and to whom they are leaving it. There are several formalities that must be complied with in order for a Holographic Will to be valid, and a client should consult with an attorney prior to executing a Holographic Will.

Attorney-Drafted Will

An Attorney-drafted Will is a Will drafted by an attorney that will provide the client greater flexibility in distributing his or her assets than permitted by a California Statutory Will. There may also be important tax planning benefits to an Attorney-drafted Will. An Attorney-drafted Will must be signed by two witnesses who are not beneficiaries of the client’s estate. A qualified estate planning attorney can ensure that the Will conforms to California law.

California Statutory Will

The California Statutory Will is a “fill-in-the-blanks” will form, governed by California Probate Code §6240. It is designed to provide clear, simple instructions for distributing a client’s assets at death. The options for distributing assets are limited in a Statutory Will, so it may not be appropriate for complex estates, clients that want to leave detailed instructions for the administration of their estate, or tax planning purposes.

¹⁰ CA Probate Code §6110 et seq.

¹¹ See CA Probate Code §6111.

Basic Will Terms

Beneficiary

A beneficiary is an individual or entity that will receive the client's assets as the client has specified in his or her Will. A beneficiary can be a family member, friend, domestic partner, spouse, or charitable organization.

Personal Representative/Executor

An Personal Representative/Executor¹² is a person or institution, such as a qualified bank or trust company, appointed by the probate court to collect and manages the client's assets, pay the client's debts, expenses, and taxes that may be due, and distributes the client's assets to the client's beneficiaries in accordance with the provision of the client's Will in a manner approved by the court.

Guardian for Minor Children

A Guardian for Minor Children is a nominee that the client designates who will have the responsibility to care for his or her child if the client and his or her spouse die before the child reaches 18 years of age. The nominee must be approved by the court, but the court generally gives deference to the nomination of the client.

Custodian for Gifts to Minors

A Custodian is a person or a trust company named by the client who will manage assets given to a beneficiary under the age of 25 until the beneficiary reaches a certain age, which is determined by the client. The client is not obligated to appoint a Custodian for beneficiaries under the age of 25. The client should be aware that if the beneficiary is under the age of 18 and no Custodian has been appointed, the beneficiary's assets will be distributed to the parent or legal guardian of such person. For more information, see the California Uniform Transfers to Minors Act, CA Probate Code §3900 et seq.

¹² Though often used interchangeably, the person or entity appointed by the Court to administers a decedent's estate in California a personal representative. An executor is the person or entity nominated by a decedent's Will to administer his or her estate, but an executor has no power to administer the estate until appointed personal representative by the Court, per CA Probate Code §8400.

Other Will Questions

Does a Will cover everything a person owns?

Wills only affect those assets that the person owns in his or her name alone at death. Wills do not cover “non-probate” assets, such as life insurance policies, retirement plans, assets owned as joint tenants, community property with right of survivorship, living trusts, or a spouse’s or registered domestic partner’s half of community property.¹³

What are the benefits of having a Will?

The main benefit of a Will is that it allows the grantor (the will’s maker) to have control over who receives his or her personal and real property after death. A Will can also be important for tax planning¹⁴, as well as numerous other benefits.

What happens if a person dies without a Will?

If a person dies without a Will (“intestate”), the person’s assets will be divided, after the payment of all debts, claims, and taxes, among his or her spouse, domestic partner, children, and/or other relatives according to state law. The court will appoint an administrator to collect, manage, and distribute his or her assets.

What is required to create a Will?

In order to create a Will, the client must have testamentary capacity. In other words, the client must understand what property he or she owns, what he or she intends to do with the property through the Will, and who his or her natural heirs are (e.g. spouse, children, parents). Additionally, a Will generally must be notarized or signed in the presence of two witnesses.

Can a Will be changed?

Yes. However, the client should NOT change the Will by crossing out words or sentences or by making notes or written corrections. If the client does so, the Will may be invalid or the court may ignore the crossed out or added words. To change a Will, a new and separate document called a “codicil” must be drafted and executed in

¹³ A Will may only dispose of one-half of community property. A Will cannot give away a decedent’s spouse’s one-half share of community property.

Community property is an asset or income that a couple has acquired or earned during their marriage or registered domestic partnership. Separate Property includes inheritances, specific gifts to one of the spouses or registered domestic partners, and property and profits clearly traceable to property owned before marriage. For further reading, a valuable resource is McGovern, Kurtz & English, *Wills, Trusts, and Estates* (4th ed. 2010).

¹⁴ Tax planning is a complex legal matter, and should not be attempted without the counsel of an attorney with tax and estate planning experience. Tax planning is outside the scope of this guide, as well as outside the scope of Bet Tzedek Advance Planning clinics.

accordance with the same state laws that apply to Wills. A new Will, replacing the old Will in its entirety, may also be executed.

What if the client already has a Will or a Living Trust?

If the client already has a Will, signing a new Will generally invalidates the prior one. If the client already has a Will or a Living Trust, a Will should not be drafted, unless the client intends to invalidate the prior Will. Otherwise, the client should be referred to the Bar Referral Service to discuss his or her needs with a private attorney.

What happens if the client makes a gift to a person under his or her Will and the beneficiary dies first?

A person must survive the client by 120 hours to make a gift under the Will. If that person does not, then the gift fails and goes with the rest of the client's assets to the person or entity designated to receive the remainder of his or her assets. If the deceased beneficiary is a relative or spouse of the client, then certain assets may go to the relative's descendants.

When should the client change his or her Will?

Though not limited to these circumstances, the client should seek the advice of a lawyer and make a new Will when:

- ❖ The client gets married or divorced;
- ❖ The client establishes or terminates a domestic partnership;
- ❖ There are any major changes in the client's family (such as births, adoptions, or deaths);
- ❖ The value of the client's assets significantly increases or decreases; or
- ❖ The client wants to change the guardian or executor previously nominated.

WHY SHOULD A CLIENT WITH NO ASSETS HAVE A WILL?

A common question from clients with few assets is "Why do I need a Will?"

► It is true that in most situations, an estate under \$150,000 will not need to be probated in California, and can instead be administered with a Small Estate Affidavit. However, for these small estates, a nominated executor in a Will can provide clarity as to whom should be the signor for a Small Estate Affidavit. Attaching a Will to a Small Estate Affidavit can also provide peace of mind to bankers, landlords, or other asset custodians that they are dealing with the person qualified to administer the Small Estate.

► A client having few or no assets of value during life does not necessarily mean they will have similar assets at death. Inheritance, lawsuits or judgments, and other unexpected assets can prompt probate, and without a Will, will default to intestate distribution.

► Having a trusted person nominated as executor can prevent arguments among heirs in the division of possessions that might occur if no one is "in charge".

Statutory Wills

A Statutory Will is a California “fill-in-the-blanks” will form governed by state statute and designed to minimize the involvement of lawyers. California Statutory Wills are controlled by California Probate Code §6240.

In a Statutory Will, the client is limited to leaving his or her:

- ❖ Personal residence
- ❖ Automobiles, household, and personal effects, and
- ❖ Balance of assets, each to one or more people or entities in equal parts.

The client may also give specific cash gifts. The client cannot pick and choose specific items of personal property to be given to specific persons or entities with a Statutory Will.

When is a Statutory Will not appropriate?

A Statutory Will should not be used if:

- ❖ The client has numerous or valuable assets,
- ❖ The client owns business-related assets,
- ❖ The client wants to create a trust,
- ❖ The client wants to disinherit his or her spouse, domestic partner, or children,
- ❖ The client owns an interest in pension or profit-sharing plans,
- ❖ The client wishes to leave specific items to specific people, or
- ❖ The client desires a complex disposition of his or her estate.

(This list is not exhaustive)

NOTE: The client should be referred to the Bar Lawyer Referral Service to find a private attorney if the Statutory Will is not appropriate for his or her needs.

Will Questionnaire

Prior to completing a Statutory Will with the client, the Statutory Will Questionnaire should be filled out with the client. This ensures that the Statutory Will is appropriate for the client.

Specific issues that may arise when completing the questionnaire include:

- ❖ The client wishes to give something to someone with SSI or Medi-Cal;¹⁵
- ❖ The client wishes to disinherit his or her spouse, domestic partner, or children out of the Will;
- ❖ The client wishes to leave specific items to specific people;
- ❖ The client already has a Will and does not wish to invalidate the prior Will; or
- ❖ The client wishes to name a beneficiary under the age of 25.

¹⁵ Receiving assets from a decedent's estate may affect the beneficiary's public benefits eligibility.

Filling out the form

STEP 1: WILL

After printing the client's name, no answer is required in this section.

CALIFORNIA STATUTORY WILL OF	
<div>Print Your Full Name</div>	
1. <u>Will</u> . This is my Will. I revoke all prior Wills and codicils.	

STEP 2: Specific Gift of Personal Residence

The answer to this question controls the disposition of the client's personal residence (home).

The client only needs to fill this out if he or she wants someone other than the person(s) listed in Section 5 (Balance of My Assets) to receive his or her personal residence.

There are 4 options;

Choice 1 – If the client selects this option, assuming the client's spouse or domestic partner survives the client, the client is leaving his or her personal residence to his or her spouse or domestic partner. If the client's spouse or domestic partner does not survive the client, the client is leaving his or her personal residence to the client's descendants.

Choice 2 – If the clients selects this option, the client is leaving his or her personal residence to his or her descendants equally, and not to the client's spouse or domestic partner.

Choice 3 – If the client selects this option, the client is leaving his or her personal residence to a specified person who must be listed, and not to his or her spouse, domestic partner, or descendants.

Choice 4 – If the client selects this option, the client is leaving his or her personal residence to more than one specified person who must be listed, and not to his or her spouse, domestic partner, or descendants. It will be divided equally among them.

NOTE: If the client wishes to disinherit his or her spouse, domestic partner, or children by choosing Choice 2, 3, or 4 if the client is married or has children, it is the policy of Bet Tzedek to not complete a Statutory Will, and refer the client to the Bar Referral Service.

2. **Specific Gift of Personal Residence.** (Optional – use only if you want to give your personal residence to a different person or persons than you give the balance of your assets to under paragraph 5 below). I give my interest in my principal personal residence at the time of my death (subject to mortgages and liens) as follows:

(Select one choice only and sign in the box after your choice.)

a. **Choice One:** All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse or domestic partner, registered with the California Secretary of State survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. **Choice Two:** Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.

c. **Choice Three:** All to the following person if he or she survives me: (Insert the name of the person.):

d. **Choice Four:** Equally among the following persons who survive me: (Insert the names of two or more persons.):

STEP 3: Specific Gift of Automobiles, Household, and Personal Effects

The answer to this question controls the disposition of the client's personal effects (i.e. automobiles, furniture, household items, clothing, jewelry, and other tangible personal property).

The client only needs to fill this out if he or she wants someone other than the person(s) listed in Section 5 (Balance of My Assets) to receive his or her automobiles, household, and personal effects.

There are 4 options:

Choice 1 – If the client selects this option, assuming the client's spouse or domestic partner survives the client, the client is leaving his or her automobiles, household, and personal effects to his or her spouse or domestic partner. If the client's spouse or domestic partner does not survive the client, the client is

leaving his or her automobiles, household, and personal effects to the client's descendants (children).

Choice 2 – If the client selects this option, the client is leaving his or her automobiles, household, and personal effects to his or her descendants equally, and not to the client's spouse or domestic partner.

Choice 3 – If the client selects this option, the client is leaving his or her automobiles household, and personal effects to a specified person must be listed, and not to his or her spouse, domestic partner, or descendants (children).

Choice 4 – If the client selects this option, the client is leaving his or her automobiles, household, and personal effects to more than one specified person who must be listed, and not to his or her spouse, domestic partner, or descendants (children). It will be divided equally among them.

NOTE: If the client wishes to disinherit his or her spouse, domestic partner, or children by choosing Choice 2, 3, or 4 if the client is married or has children, it is the policy of Bet Tzedek to not complete a Statutory Will, and refer the client to the Bar Referral Service.

3. Specific Gift of Automobiles, Household and Personal Effects. (Optional—use only if you want to give automobiles and household and personal effects to a different person or persons than you give the balance of your assets to under paragraph 5 below.) I give all of my automobiles (subject to loans), furniture, furnishings, household items, clothing, jewelry, and other tangible articles of a personal nature at the time of my death as follows:

(Select one choice only and sign in the box after your choice.)

a. Choice One: All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse or domestic partner, registered with the California Secretary of State, survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. Choice Two: Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.

c. Choice Three: All to the following person if he or she survives me (Insert the name of the person.):

d. Choice Four: Equally among the following persons who survive me (Insert the names of two or more persons.):

STEP 4: Specific Gifts of Cash

This section is optional. If the client wishes to make one or more specific cash gifts to persons or charities, the client must complete this section by including the name of the person or charity who the client wishes to receive the cash gift along with the numerical value of the cash gift. If the client does not wish to make any specific cash gifts, this section should be left blank.

4. Specific Gifts of Cash. (Optional) I make the following cash gifts to the persons named below who survive me, or to the named charity, and I sign my name in the box after each gift. If I do not sign in the box, I do not make a gift. (Sign in the box after each gift you make.)

Name of Person or Charity to receive gift (name one only – please print)	Amount of Cash Gift _____ <i>Sign your name in this box to make this gift</i>
Name of Person or Charity to receive gift (name one only – please print)	Amount of Cash Gift _____ <i>Sign your name in this box to make this gift</i>
Name of Person or Charity to receive gift (name one only – please print)	Amount of Cash Gift _____ <i>Sign your name in this box to make this gift</i>
Name of Person or Charity to receive gift (name one only – please print)	Amount of Cash Gift _____ <i>Sign your name in this box to make this gift</i>
Name of Person or Charity to receive gift (name one only – please print)	Amount of Cash Gift _____ <i>Sign your name in this box to make this gift</i>

Section 5: Balance of My Assets

This section controls the disposition of the client's remaining assets (i.e. assets that were not disposed of in Sections 2, 3, or 4 above).

There are 4 options:

Choice 1 – If the client selects this option, assuming the client's spouse or domestic partner survives the client, the client is leaving his or her balance of assets to his or her spouse or domestic partner. If the client's spouse or domestic partner does not survive the client, the client is leaving his or her balance of assets to the client's descendants.

Choice 2 – If the client selects this option, the client is leaving his or her balance of assets to his or her descendants equally, and not to the client's spouse or domestic partner.

Choice 3 – If the client selects this option, the client is leaving his or her balance of assets to a specified person who must be listed, and not to his or her spouse, domestic partner, or descendants (children).

Choice 4 – If the client selects this option, the client is leaving his or her balance of assets to more than one specified person who must be listed, and not to his or her spouse, domestic partner, or descendants (children). It will be divided equally among them.

NOTE: If the client wishes to disinherit his or her spouse, domestic partner, or children by choosing Choice 2, 3, or 4 if the client is married or has children, it is the policy of Bet Tzedek to not complete a Statutory Will, and refer the client to the Bar Referral Service.

5. **Balance of My Assets.** Except for the specific gifts made in paragraphs 2, 3 and 4 above, I give the balance of my assets as follows:

(Select one choice only and sign in the box after your choice. If I sign in more than one box or if I do not sign in any box, the court will distribute my assets as if I did not make a Will.)

a. **Choice One:** All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse or domestic partner, registered with the California Secretary of State survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. **Choice Two:** Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.

c. **Choice Three:** All to the following person if he or she survives me: (Insert the name of the person.):

d. **Choice Four:** Equally among the following persons who survive me: (Insert the names of two or more persons.):

STEP 6: Guardian of the Child's Person

If the client, upon death, has a child under the age of 18 who does not have a living parent, this section determines who will act as the Guardian of this child.

6. Guardian of the Child's Person. If I have a child under age 18 and the child does not have a living parent at my death, I nominate the individual named below as First Choice as guardian of the person of that child (to raise the child). If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve. Only an individual (not a bank or trust company) may serve.

Name of First Choice for Guardian of the Person

Name of Second Choice for Guardian of the Person

Name of Third Choice for Guardian of the Person

STEP 7: Special Provision for Property of Persons Under Age 25

This section should be completed if the client wishes to name a person or trust company to act as a Custodian of the assets given to a person who is under the age of 25. A Custodian manages the assets of someone who receives assets under the client's Will.

If the client wishes to name a Custodian of assets and a successor Custodian, the client should list the names(s) of his or her choice(s) in the boxes provided and insert the age at which the client wishes the Custodian's role to terminate (from 18 to 25).

If the client does not complete this section and assets are to be given to a person under the age of 18, the assets the client leaves to such person will be distributed to the parent or Guardian of such person.

7. Special Provision for Property of Persons Under Age 25. (Optional—unless you use this paragraph, assets that go to a child or other person who is under age 18 may be given to the parent of the person, or to the Guardian named in paragraph 6 above as guardian of the person until age 18, and the court will require a bond, and assets that go to a child or other person who is age 18 or older will be given outright to the person. By using this paragraph you may provide that a custodian will hold the assets for the person until the person reaches any age from 18 to 25 which you choose.) If a beneficiary of this Will is under the age chosen below, I nominate the individual or bank or trust company named below as First Choice as custodian of the property. If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve.

Name of First Choice for Custodian of Assets

Name of Second Choice for Custodian of Assets

Name of Third Choice for Custodian of Assets

Insert any age from 18 to 25 as the age for the person to receive the property.
(If you do not choose an age, age 18 will apply.)

STEP 8: Executor

This section names an individual, bank, or trust company to act as Executor of the client's Will. The client should name a trusted individual, bank, or trust company as his or her first, second, and third choices for Executor in the spaces provided.

8. Executor. I nominate the individual or bank or trust company named below as First Choice as executor. If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve.

Name of First Choice for Executor

Name of Second Choice for Executor

Name of Third Choice for Executor

STEP 9: Bond

This section determines if a bond should be required for the Executor/Administrator. This bond is paid out of the estate and will be sued to cover any mismanaged assets if the Executor/Administrator breaches his or her fiducial duties. If the client does not prefer for a bond to be posted, the client should sign this section to indicate that a bond is not required for the Executor/Administrator.

9. Bond. My signature in this box means a bond is not required for any person named as executor. A bond may be required if I do not sign in this box:

No bond shall be required.

STEP 10: Signature and Witnesses

The client will sign and date the Will in the presence of two witnesses. The two witnesses will then sign and date and provide their addresses.

Instructing the client on post-execution steps

- ❖ The client should place the Will in a safe place. The client should notify family members and/or trusted friends where the client is keeping the Will.
- ❖ The client should make at least 3 copies of the original
 - One copy will remain in the client's Bet Tzedek file.
 - The client retains the other copies along with the original.
- ❖ Finally, ask the client if he or she has any further questions and let the client know that he or she can call Bet Tzedek at 323.939.0506 with questions that arise, or if they would like to make changes to the document.

CALIFORNIA STATUTORY WILL OF

Print Your Full Name

1. **Will.** This is my Will. I revoke all prior Wills and codicils.
2. **Specific Gift of Personal Residence.** (Optional – use only if you want to give your personal residence to a different person or persons than you give the balance of your assets to under paragraph 5 below). I give my interest in my principal personal residence at the time of my death (subject to mortgages and liens) as follows:

(Select one choice only and sign in the box after your choice.)

a. **Choice One:** All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse or domestic partner, registered with the California Secretary of State survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. **Choice Two:** Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.

c. **Choice Three:** All to the following person if he or she survives me: (Insert the name of the person.):

d. **Choice Four:** Equally among the following persons who survive me: (Insert the names of two or more persons.):

3. **Specific Gift of Automobiles, Household and Personal Effects.** (Optional – use only if you want to give automobiles and household and personal effects to a different person or persons than you give the balance of your assets to under paragraph 5 below). I give all of my automobiles (subject to loans), furniture, furnishings, household items, clothing, jewelry, and other tangible articles of a personal nature at the time of my death as follows:

(Select one choice only and sign in the box after your choice.)

a. **Choice One:** All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse or domestic partner, registered with the California Secretary of State survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. **Choice Two:** Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.

c. **Choice Three:** All to the following person if he or she survives me: (Insert the name of the person.):

d. **Choice Four:** Equally among the following persons who survive me: (Insert the names of two or more persons.):

4. **Specific Gifts of Cash.** (Optional) I make the following cash gifts to the persons named below who survive me, or to the named charity, and I sign my name in the box after each gift. If I do not sign in the box, I do not make a gift. (Sign in the box after each gift you make.)

Name of Person or Charity to receive gift (name one only – please print)	Amount of Cash Gift
	Sign your name in this box to make this gift

Name of Person or Charity to receive gift (name one only – please print)	Amount of Cash Gift
	Sign your name in this box to make this gift

Name of Person or Charity to receive gift (name one only – please print)	Amount of Cash Gift
	Sign your name in this box to make this gift

Name of Person or Charity to receive gift (name one only – please print)	Amount of Cash Gift
	Sign your name in this box to make this gift

Name of Person or Charity to receive gift (name one only – please print)	Amount of Cash Gift
	Sign your name in this box to make this gift

5. **Balance of My Assets.** Except for the specific gifts made in paragraphs 2, 3 and 4 above, I give the balance of my assets as follows:

(Select one choice only and sign in the box after your choice. If I sign in more than one box or if I do not sign in any box, the court will distribute my assets as if I did not make a Will.)

a. **Choice One:** All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse or domestic partner, registered with the California Secretary of State survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. **Choice Two:** Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.

c. **Choice Three:** All to the following person if he or she survives me: (Insert the name of the person.):

d. **Choice Four:** Equally among the following persons who survive me: (Insert the names of two or more persons.):

6. **Guardian of the Child's Person.** If, at my death, I have a child under age 18, whether the child is alive at the time this will is executed or born after the date this will is executed, and the child does not have a living parent, I nominate the individual named below as First Choice as guardian of the person of such child (to raise the child). If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve. Only an individual (not a bank or trust company) may serve.

Name of First Choice for Guardian of the Person

Name of Second Choice for Guardian of the Person

Name of Third Choice for Guardian of the Person

7. **Special Provision for Property of Persons Under Age 25.** (Optional – Unless you use this paragraph, assets that go to a child or other person who is under age 18 may be given to the parent of the person, or to the Guardian named in paragraph 6 above as guardian of the person until age 18, and the court will require a bond; and assets that go to a child or other person who is age 18 or older will be given outright to the person. By using this paragraph you may provide that a custodian will hold the assets for the person until the person reaches any age from 18 to 25 which you choose). If a beneficiary of this Will is under the age chosen below, I nominate the individual or bank or trust company named below as First Choice as custodian of the property. If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve.

Name of First Choice for Custodian of Assets

Name of Second Choice for Custodian of Assets

Name of Third Choice for Custodian of Assets

Insert any age from 18 to 25 as the age for the person to receive the property:

(If you do not choose an age, age 18 will apply.)

8. **Executor.** I nominate the individual or bank or trust company named below as First Choice as executor. If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve.

Name of First Choice for Executor

Name of Second Choice for Executor

Name of Third Choice for Executor

9. **Bond.** My signature in this box means a bond is not required for any person named as executor. A bond may be required if I do not sign in this box:

No bond shall be required.

(Notice: You must sign this Will in the presence of two (2) adult witnesses. The witnesses must sign their names in your presence. You must first read to them the following two sentences.)

This is my Will. I ask the persons who sign below to be my witnesses.

Signed on _____ at _____, California.
(date) (city)

Signature of Maker of Will

(Notice to Witnesses: Two (2) adults must sign as witnesses. Each witness must read the following clause before signing. The witnesses should not receive assets under this Will.)

Each of us declares under penalty of perjury under the laws of the State of California that the following is true and correct:

- a. On the date written below the maker of this Will declared to us that this instrument was the maker's Will and requested us to act as witnesses to it;
- b. We understand this is the maker's Will;
- c. The maker signed this Will in our presence, all of us being present at the same time;
- d. We now, at the maker's request, and in the maker's presence, sign below as witnesses;
- e. We believe the maker is of sound mind and memory;
- f. We believe that this Will was not procured by duress, menace, fraud or undue influence;
- g. The maker is age 18 or older; and
- h. Each of us is now age 18 or older, is a competent witness, and resides at the address set forth after his or her name.

DATE: _____

Signature of Witness

Signature of Witness

Print Name Here

Print Name Here

Residence Address

Residence Address

AT LEAST TWO WITNESSES MUST SIGN