

# Pour Over Will

## THE WILL OF [testator name]

I, [testator name], of [city], [state], declare this to be my Last Will and Testament, expressly revoking any and all previous wills and codicils that I have made.

### Article I. Introductory Provisions.

**1.1.** Marital Status. I am married to [name of spouse], and all references in this will to "my [husband or wife]" are to [him/her/them]. OR I declare that I am not now married, [select one of the following: have never been married or was lawfully divorced from my prior spouse on (date) or am widowed].

**1.2.** Identification of Living Child(ren). I have [number] living [child or children], whose name[s] and date[s] of birth [is or are] as follows:

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**1.3.** Deceased Children. I have no deceased children. OR I have [number] deceased [child or children], whose name[s] and date[s] of birth [is or are] as follows:

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**1.4.** Definitions of Child and Children. As used in this will, the terms "child" and "children" refer to all persons referred to in [state] Probate Code Section 26, as in effect at the time of execution of this will.

**1.5.** Definition of Issue. As used in this will, the term "issue" refers to all lineal descendants of all generations, with the relationship of parent and child in each generation being determined by the definitions of "child" and "children" set forth in this will.

**1.6.** Number and Gender. As used in this will, references in the masculine gender shall be deemed to include the feminine and neuter genders, and vice versa, and references to the singular shall be deemed to include the plural, and vice versa, wherever the context so permits.

**1.7.** Property Disposed of by Will. It is my intention by this will to dispose of all of my separate property, [and] my entire one-half interest in the community property of my [wife or husband] and myself [*if there is likely to be any quasi-community property*, add:, and my entire one-half interest in my quasi-community property].

**1.8.** No Contract Affecting Will. I have not entered into any contract to make a will or a testamentary gift, not to revoke a will or a testamentary gift, or to die intestate. [**OPTIONAL:**, add language referring to similar will executed by spouse: The similarity of the provisions of this

will to the provisions of the will of my (husband or wife) (executed on this date) shall not be construed as evidence of any such contract.]

## Article II. Particular Gifts.

**2.1.** Specific Gifts of Personal Property. I give the items of property described below **[OPTIONAL:]**, together with my interest in any insurance on those items,] to the persons named below:

(a) I give [describe property] to [name of devisee and relationship to testator or other means of identification, e.g., my sister, Ellen Green Smith] *[if desired, add survivorship clause, e.g., if she survives me or, if she survives me for 60 days]* *[if gift is conditioned on survival, add alternative disposition, e.g.,; but if she does not survive me (for that period), this gift shall (e.g., lapse and become part of the residue of my estate or go to my daughter, Sue Ellen Green)]*;

(b) I give [describe property] to [name of devisee and relationship to testator or other means of identification, e.g., my niece, Nancy L. Smith] *[if desired, add survivorship clause, e.g., if she survives me or, if she survives me for 60 days]* *[if gift is conditioned on survival, add alternative disposition, e.g.,; but if she does not survive me (for that period), this gift shall (e.g., lapse and become part of the residue of my estate or go to my daughter, Sue Ellen Green, is she should survive me)]*;

[Continue as necessary for each additional item of property to be specifically devised.]

**2.2.** Gift[s] to Be Selected From Among My Personal Effects. I give [name(s) of devisee(s) and relationship(s) to testator] the right to select [specify, e.g., one item or one item each or two items or two items each] from among my personal effects so that [he/she/they] will have [a memento or mementos] to remember me by. I make this gift to [him/her/them] as a symbol of my love and affection. If [he/she/they or any person named in this section] does not survive me or does not make a selection within three months after the date of my death, or within 30 days after this will is admitted to probate, whichever is later, then the gift made to [him/her/them or that person] in this section shall fail. *[If desired, specify any types of property that may not be selected, e.g., For purposes of this gift only, the word "personal effects" shall not include [describe item] or any items of property with an appraised value in excess of \$2,500].*

**2.3.** Tangible Personal Property. I give all of my tangible personal property *[if will makes any specific gifts, add: that is not otherwise disposed of as a specific gift in this will]*, including my interest in any insurance on that property, to my [husband or wife], if [he/she/they] survives me *[if desired, specify survivorship period, e.g., for 60 days]*, and if [he/she/they] does not survive me [for that period], to my children who survive me [for that period], to be divided among them as they believe to be in accordance with my wishes. If my children are not able to agree on a division, the executor shall divide the property among them as the executor believes to be in accordance with my wishes, the decision of the executor as to this division to be final and incontestable by anyone. **[OPTIONAL:]** The term "tangible personal property" (includes, but is not limited to, or does not include) (specify items, e.g., livestock, pets, airplanes, and motor

vehicles).] **[OPTIONAL:** If this will makes any specific gift of a particular piece of tangible personal property pursuant to Section 2.1, and if that piece does not exist at my death, the devisee is not entitled to receive a bequest of equal value. Such bequest shall be deemed an ademption unless I expressly specify otherwise.]

**2.4.** General Pecuniary Gift. I give the sum of \$[amount] to [name of devisee and relationship to testator or other means of identification] *[if desired, add survivorship clause, e.g., if she survives me or, if she survives me for 60 days]. [If gift is conditioned on survival, add appropriate alternative disposition, e.g., If she does not survive me (for that period), this gift shall (e.g., lapse and become part of the residue of my estate).]*

**2.5.** Interest on Pecuniary Gifts. [Except as otherwise specifically provided in this will,] [n]o interest shall accrue on [all or general] pecuniary gifts made in this will.

## **Article III. Residuary Provisions.**

**3.1.** Disposition of Residue. I give the residue of my estate to the trustee(s) of the [name of trust, e.g., Green Family Trust], created under the [identify trust instrument, e.g., trust agreement or declaration of trust], executed on [date] by [identify party or parties executing instrument, as Settlers and Trustees]. The trustee(s) of that trust shall add the residue of my estate to the trust principal and hold, administer, and distribute the property in accordance with the provisions of that [e.g., trust agreement or declaration of trust], including any amendments of that [e.g., trust agreement or declaration of trust] that have been made before or after execution of this will.

**3.2.** Alternate Disposition of Residue. If the [name of trust, e.g., Green Family Trust] has been revoked, terminated, or declared invalid for any reason, I give the portion of the residue of my estate to [name(s) of current trustee(s) or other person(s), e.g., the executor of this will], as trustee, who shall hold, administer, and distribute the property under a testamentary trust, the terms of which shall be identical to the terms of the [name of trust, e.g., Green Family Trust] that are in effect on the date of execution of this will.

**3.3.** Alternate Disposition of Residue. If the residue of my estate is not completely disposed of by the preceding provisions, I give the portion that is not disposed of to my heirs.

## **Article IV. Executor.**

**4.1.** Nomination of Executor. I nominate [name and relationship to testator or other means of identification, e.g., my husband or my wife or my sister, Ellen Green Fiddler,] as executor of this will.

**4.2.** Successor Executors. If [nominee(s) for initial executor, e.g., my husband or my wife or my sister, Ellen Green Fiddler,] is for any reason unable or unwilling to serve, or to continue to serve, as executor, I nominate the following, in the order of priority indicated, as successor executor:

First, [name and description, e.g. (for coexecutors): my brother, Charles D. Green, and my sister, Lola D. Smith];

Second, [name and description, e.g. (for individual): Edward R. Taylor, who resides at (address)];

Third, [name and description, e.g. (for corporate executor): Double Eagle Bank, Fresno, [state] office].

**4.3.** Definition of Executor. The term "executor," as used in this will, refers to each personal representative of my estate who is serving at the pertinent time.

**4.4.** Bond. [No bond or undertaking OR Bond] shall be required of any executor nominated in this will.

**4.5.** Independent Administration. The executor shall [have full or not have] authority to administer my estate under the administration of estates laws of [state].

**4.6.** Powers of Executor. Subject to any limitations stated elsewhere in this will, the executor shall have, in addition to all of the powers now or hereafter conferred on executors by law, and any powers enumerated elsewhere in this will, the power to perform any of the acts specified in this section:

(a) Take possession or control of all of my estate subject to disposition by this will, and collect all debts due to me or to my estate.

(b) Receive the rents, issues, and profits from all real and personal property in my estate until the estate is settled or delivered over by order of court to my heirs or beneficiaries.

(c) Pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, all property in my estate.

(d) Commence and prosecute, either individually or jointly with my heirs or beneficiaries, any action necessary or proper to quiet title to or recover possession of any real or personal property in my estate.

(e) Vote in person, and give proxies to exercise, any voting rights with respect to any stock, any membership in a nonprofit corporation, or any other property in my estate, and waive notice of a meeting, give consent to the holding of a meeting, and authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

(f) Insure the property of my estate against damage or loss, and insure the executor against liability to third persons.

(g) Deposit money belonging to my estate in an insured account in a financial institution in [state].

(h) Invest and reinvest any money of my estate not reasonably required for the immediate administration of my estate in any kind of property, real, personal, or mixed, that persons of prudence, discretion, and intelligence acquire for their own accounts; provided, however, that in investing any property of my estate, the executor shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of my estate and its beneficiaries, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of my estate as determined from this will.

(i) Retain any assets of my estate for as long as the executor deems to be in the best interest of my estate.

(j) Borrow money on behalf of my estate and pledge, hypothecate, or otherwise encumber property of my estate, real or personal, as security for any sums so borrowed.

(k) In order to satisfy a pecuniary gift or to distribute or divide estate assets into shares or partial shares, the executor may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this will shall be valued at its fair market value at the time of distribution.

(l) Pay any and all charges reasonably incurred in connection with or incidental to the distribution of any property of my estate, including but not limited to expenses of storage, freight, shipping, delivery, packing, and insurance; and, on any accounting, treat any such expenditures as expenses of the administration of my estate.

(m) If any asset of my estate consists of an option right, exercise the option after authorization by order of court, upon a showing that the exercise would be to the advantage of my estate, and use any funds or property in my estate to acquire the property covered by the option.

(n) Hold a security in the name of a nominee or in any other form without disclosure of my estate so that title to the security may pass by delivery.

(o) Exercise any subscription rights owned or received by my estate by reason of owning securities, after authorization by court upon a showing that it is to the advantage of my estate.

(p) Sell, at either public or private sale and with or without notice, and grant options to purchase, any property belonging to my estate [OPTIONAL:, subject only to any confirmation of court required by law].

(q) Lease any real or personal property belonging to my estate on such terms and conditions as the executor determines to be in the best interest of my estate [OPTIONAL:, subject only to any confirmation of court required by law].

(r) Dispose of or abandon tangible personal property, except tangible personal property that is a specific gift, when the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.

(s) Compromise or settle any claim, action, or proceeding by or for the benefit of, or against, me, my estate, or the executor [**OPTIONAL**], subject only to any confirmation of court that may be required by law].

(t) Employ professional investment counsel to make recommendations with respect to, and otherwise assist in, investing the assets of my estate; and, on any accounting, treat any fees paid to investment counsel as expenses of the administration of my estate.

(u) Take any action with respect to any Digital Assets owned by me as my executor shall deem appropriate, including, but not limited to, accessing, handling, distributing, disposing of, or otherwise exercising control over or exercising any right (including the right to change a terms of service agreement or other governing instrument) with respect to such Digital Assets. My executor may engage experts or consultants or any other third party, and may delegate authority to such experts, consultants or third party, as necessary or appropriate to effectuate such actions with respect to the Digital Assets, including, but not limited to, such authority as may be necessary or appropriate to decrypt electronically stored information, or to bypass, reset or recover any password or other kind of authentication or authorization. This authority is intended to constitute "lawful consent" to a service provider to divulge the contents of any communication under The Stored Communications Act (18 U.S.C. §§ 2701 et seq.), to the extent that such lawful consent is required. For purposes of this instrument, "Digital Assets" shall include files stored on any digital devices owned by me, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smart phones, cameras, electronic reading devices and any similar digital device which currently exists or may exist as technology develops or such comparable items as technology develops, regardless of the ownership of the physical device on which the digital item is stored. "Digital Assets" shall also include, without limitation, emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, domain registrations, DNS service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, so-called cloud storage accounts, other online accounts and similar digital items which currently exist or may exist as technology develops or such comparable items which may exist as technology develops, including any words, characters, codes, or contractual rights necessary to access such items, regardless of the ownership of the physical device upon which the digital item is stored.

**4.7.** Payments to Incapacitated Persons. If at any time any beneficiary under this will is a minor, or it appears to the executor that any beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the executor, in lieu of making direct payments to the beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state (including a custodian selected by the executor); to one or more suitable persons as the executor deems

proper, such as a relative of or a person residing with the beneficiary, to be used for the beneficiary's benefit; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the executor for all purposes.

**4.8.** Executor's Liability for Own Acts. The executor shall not be liable to my estate or to any person interested in it for any act or omission of the executor, except an act or omission that is committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of persons interested in my estate, or an act or omission from which the executor derives a profit.

## **Article V. Guardian.**

**5.1.** Nomination of Guardian. If a guardian of the person, estate, or person and estate is necessary for any minor child of mine, I nominate [name and relationship to testator or other means of identification, e.g., my sister, Ellen Green Fiddler or Robert J. Farmer, who resides at (address)], as that guardian. If at any time [name, e.g., my sister, Ellen Green Fiddler or Robert J. Farmer] is unable or unwilling to serve or continue as guardian, I nominate [name and relationship to testator or other means of identification, e.g., my brother, Charles D. Green,] as guardian.

**5.2.** Bond. [No bond or undertaking OR Bond] shall be required of any guardian of the estate nominated in this will.

## **Article VI. Concluding Provisions.**

**6.1.** Definition of Death Taxes. The term "death taxes," as used in this will, shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in my estate or by reason of my death, including penalties and interest, but excluding the following:

- (a) Any additional tax that may be assessed under Internal Revenue Code Section 2032A.
- (b) Any federal or state tax imposed on a generation-skipping transfer, as that term is defined in the federal tax laws [, unless the applicable tax statutes provide that the generation-skipping transfer tax on that transfer is payable directly out of the assets of my gross estate].

**6.2.** Payment of Death Taxes. The executor shall pay death taxes, whether or not attributable to property inventoried in my probate estate, by prorating and apportioning them among the persons interested in my estate as provided in the [state] Probate Code. The method of apportionment of death taxes specified in this will shall apply equally to any property passing under any codicil to this will, except to the extent that a codicil expressly provides for a different method of apportionment.

**6.3.** Abatement of Gifts. If my estate is insufficient to satisfy in full all of the gifts provided for in this will, I direct that gifts shall abate in the following order: first general gifts, then specific gifts, then demonstrative gifts; provided, however, that the gifts to my [husband or wife] shall not abate until all other gifts have abated [, and the gifts to my children shall not abate until gifts to all persons and entities other than my (husband and children or wife and children) have abated]. All gifts of the same class shall abate proportionally.

**6.4.** Simultaneous Death. If any beneficiary under this will and I die simultaneously, or if it cannot be established by clear and convincing evidence whether that beneficiary or I died first, I shall be deemed to have survived that beneficiary, and this will shall be construed accordingly.

**6.5.** Intentional Omission of Heirs Not Specifically Provided for in Will. Except as otherwise specifically provided in this will, I have intentionally and with full knowledge omitted to provide for my heirs, regardless of whether or not I am aware of their existence and identities at the time this will is executed.

**6.6.** No-Contest Clause. If any person other than the settlor or spouse of the settlor ("contestant") directly or indirectly, singularly or in conjunction with another person, challenges the validity or seeks to void, nullify or set aside this will or any provision, instrument or codicil in existence on the date of execution of this will, then their interest shall be void and shall pass as if they had predeceased me [**optional:** without issue.] My executor is hereby authorized to defend, and may be reimbursed by my estate against any contestant under Probate Code § 21311 who:

(a) brings a pleading to challenge a property transfer on the grounds that the transferor did not own the property at the transfer time; or

(b) files any creditor's claim or prosecutes any action based on the filing of a claim of this kind; or

(c) without probable cause challenges the validity of this will [**optional:**, or the validity of any contract, agreement (including any trust agreement), declaration of trust, beneficiary designation, or other document executed by me or executed by another for the benefit of me that is in existence on the date that this will is executed and further described as [(provide express identification of such items, either individually or as a class)],] on any of the following grounds:

(1) Forgery;

(2) Lack of due execution;

(3) Lack of capacity;

(4) Menace, duress, fraud, or undue influence;

(5) Revocation of a will pursuant to Section 6120, revocation of a trust pursuant to Section 15401, or revocation of an instrument other than a will or trust pursuant to the procedure for revocation that is provided by statute or by the instrument.

(6) Disqualification of a beneficiary under Cal. Prob. Code §§ 6112, 21380 or applicable successor statutes.

**6.7.** Perpetuities Savings Clause. Notwithstanding any other provision of this will, every trust created by this will [, or by the exercise of any power of appointment created by this will,] shall terminate no later than 21 years after the death of [designate measuring life or lives, e.g., the last survivor of my spouse and my issue] who are alive at the time of my death. If a trust is terminated under this section of the will, the trustee shall distribute all of the principal and undistributed income of the trust to the income beneficiaries of the trust in the proportion in which they are entitled (or eligible, in the case of discretionary payments) to receive income immediately before the termination. If that proportion is not fixed by the terms of this will, the trustee shall distribute all of the trust property to the persons then entitled or eligible to receive income from the trust [specify pattern of distribution, e.g., outright in a manner that, in the trustee's opinion, will give effect to my intent in creating the trust, the trustee's decision to be final and incontestable by anyone or as a class, in the manner provided in [state] Probate Code Section \_\_\_ or in equal shares, regardless of whether all of such persons are members of the same generation].

**6.8.** Definition of Incapacity. For purposes of this will, a person shall be deemed "incapacitated" if and for so long as a court of competent jurisdiction has made a finding to that effect, or a guardian or conservator of that person's estate or person duly appointed by a court of competent jurisdiction is serving, or upon certification by two physicians licensed to practice under the laws of the state where the person is domiciled at the time of the certification that the person is unable properly to care for himself or herself or for his or her property. The latter certification shall be made by each physician in a written declaration under penalty of perjury.

**6.9.** Captions. The captions appearing in this will are for convenience of reference only and shall be disregarded in determining the meaning and effect of the provisions of this will.

**6.10.** Severability Clause. If any provision of this will is invalid, that provision shall be disregarded, and the remainder of this will shall be construed as if the invalid provision had not been included.

**6.11.** Law to Apply. All questions concerning the validity and interpretation of this will, including any trusts created by this will, shall be governed by the laws of the State of [state] in effect at the time this will is executed.

**6.12.** Gifts to "Heirs." For any gift to my heirs that is made outright in this instrument, those heirs shall be determined as if I had died intestate at the time for distribution, and the identity and shares of those heirs shall be determined according to the [state] laws of succession that concern separate property not acquired from a previously deceased spouse and that are in

effect at my death. For any assets of any trust estate created by this will to be distributed to my heirs, those heirs shall be determined as if I had died intestate immediately following the termination of the trust of each share, and the identity and shares of those heirs shall be determined according to the [state] laws of succession that concern separate property not acquired from a previously deceased spouse and that are in effect at my death.

Executed on [date], at [city or town and state].

*[signature of testator]*

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[typed name]

On the date written above, we, the undersigned, each being present at the same time, witnessed the signing of this instrument by [name of testator]. At that time, [he/she/they] appeared to us to be of sound mind and memory and, to the best of our knowledge, was not acting under fraud, duress, menace, or undue influence. Understanding this instrument, which consists of [number] pages, including the pages on which the signature of [name of testator] and our signatures appear, to be the will of [name of testator], we subscribe our names as witnesses thereto. We declare under penalty of perjury under the laws of the State of [state] that the foregoing is true and correct.

Executed on [date], at [city and state].

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*[signature of first witness]*

Residing at [street address]

[city and state]

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[*signature of second witness*]

Residing at [street address]

[city and state]