

# Wills: Connecticut

LAURA WEINTRAUB BECK, STEFANIA L. BARTLETT, AND ANDREW M. NERNEY, CUMMINGS & LOCKWOOD LLC WITH PRACTICAL LAW TRUSTS & ESTATES

Search the [Resource ID numbers in blue](#) on Westlaw for more.

A Q&A guide to the law of wills in Connecticut. This Q&A addresses state laws and customs that impact wills, including the key statutes and rules related to wills, the rules of intestacy, the requirements for creating a valid will, common will provisions, information concerning fiduciaries, and information regarding making changes to wills after execution, special circumstances regarding gifts made under a will or gift recipients, and lost wills.

## KEY STATUTES AND RULES

### 1. What are the key statutes and rules that govern wills in your state?

The rules and laws pertaining to wills and probate proceedings in Connecticut are found in Connecticut General Statutes (Conn. Gen. Stat. Ann.) Title 45a, Probate Courts and Procedures. Particularly relevant to wills and the administration of estates are the following chapters of Title 45a: Chapter 802a (Execution of Will, Revocation of Wills and Construction of Wills); Chapter 802b (Decedent's Estates); and Chapter 802c (Trusts) and the Probate Court Rules of Procedure.

## WHO CAN CREATE A WILL

### 2. Is there a minimum age requirement to create a will?

A person must be at least 18 years old to dispose of property by will in Connecticut (Conn. Gen. Stat. Ann. § 45a-250).

### 3. What is the standard of mental capacity required to create a will?

A person must be of sound mind to dispose of property by will in Connecticut (Conn. Gen. Stat. Ann. § 45a-250).

Sound mind means that a testator must have mind and memory sound enough to enable the testator to know and understand the execution of the testator's will at the same time the testator executes it (*Atchison v. Lewis*, 38 A.2d 673, 674 (Conn. 1944) and *Stanton v. Grigley*, 418 A.2d 923, 927 (Conn. 1979)).

Some mental impairment can exist and still leave sufficient capacity to make a will (*Doolittle v. Upson*, 88 A.2d 334 (Conn. 1952)). A person may be competent to make a will even if lacking the mental capacity to manage or transact business and to make and understand all parts of a contract (*Doolittle*, 88 A.2d at 336). A testator need not be able to explain technical phraseology in a relatively complicated will (*Shulman v. Shulman*, 193 A.2d 525 (Conn. 1963)).

### 4. Can an agent under a power of attorney create a will on behalf of a testator?

An agent under a power of attorney cannot create a will on behalf of a testator. A valid will must first be subscribed by the testator (Conn. Gen. Stat. Ann. § 45a-251). A will must comply strictly with the requirements of the statute to be valid (*Gardner v. Balboni*, 588 A.2d 634, 637 (Conn. 1991)). While permitting a principal to grant to the principal's agent(s) many powers, the Connecticut Uniform Power of Attorney Act does not permit an agent to create or execute a will on behalf of the principal (Conn. Gen. Stat. Ann. § 1-350).

## PERMISSIBLE FORM OF WILL

### 5. What form must the will take? In particular, please specify whether:

- Handwritten (holographic) wills are permitted.
- Oral (nuncupative) wills are permitted.
- Contractual wills are permitted.
- Statutory wills are permitted.
- Electronic wills are permitted.
- Out-of-state wills are binding.

A will must be:

- In writing.
- Signed by the testator.
- Attested to by two witnesses, both of which must sign the will in the presence of the testator.

(Conn. Gen. Stat. Ann. § 45a-251.)

### HANDWRITTEN (HOLOGRAPHIC) WILLS

Connecticut law allows for handwritten or holographic wills (see, for example, *In the Matter of Alfred H. Jordan Probate Court, Town of Fairfield February 6, 1996*, 13 Quinnipiac Prob. L.J. 149 (1998) and *Hill v. LaFata*, 2000 WL 1475561 (Conn. Super. Ct. 2000)). Handwritten wills must comply with all execution requirements for wills in Connecticut. Handwritten wills need not be entirely written in the testator's handwriting. (*Byrne v. Woods*, 9 Conn. App. 1561 (December 29, 2003).)

### ORAL (NUNCUPATIVE) WILLS

Oral wills are not permitted. A will executed in Connecticut must be in writing. (Conn. Gen. Stat. Ann. § 45a-251.)

### CONTRACTUAL WILLS

Connecticut case law has upheld an agreement to bequeath property if the agreement is properly made and is supported by sufficient and adequate consideration (*Crofut v. Layton*, 35 A. 783 (Conn. 1896)).

## 15

### STATUTORY WILLS

Connecticut does not provide a statutory will.

### ELECTRONIC WILLS

Connecticut has not adopted any statute regarding electronic wills and has not allowed admission of electronic wills to probate.

### OUT-OF-STATE WILLS

Any will validly executed under the laws of the state or country in which it was executed can be admitted to probate in Connecticut (Conn. Gen. Stat. Ann. § 45a-251).

Connecticut has also adopted the Uniform International Wills Act, which provides that wills executed in compliance with the Act are valid in Connecticut regardless of the testator's domicile or the location of the assets governed by the will (Conn. Gen. Stat. Ann. §§ 50a-1 to 50a-9). The Act cannot be used to validate a joint will (Conn. Gen. Stat. Ann. § 50a-2(c)).

## WILL EXECUTION REQUIREMENTS

### 6. What are the execution requirements for a valid will? In particular, please specify:

- Requirements for the testator's signature.
- Any requirements for witnesses to a will.
- Any requirements for the will to be notarized.
- An example of an attestation clause.
- The requirements for a self-proving affidavit.
- If electronic wills are permitted, any different execution requirements.

### TESTATOR'S SIGNATURE

A will must be subscribed by the testator (Conn. Gen. Stat. Ann. § 45a-251). The requirement that the will be subscribed by the testator has been interpreted to mean that the testator must sign the will at the end of the document (*Wheat v. Wheat*, 244 A.2d 359 (Conn. 1968) and *Gardner v. Balboni*, 588 A.2d 634 (Conn. 1991)).

Connecticut does not statutorily authorize another person to sign a will on behalf of a testator, even if at the direction and request of the testator, but any mark of the testator should satisfy the subscription requirement (Conn. Gen. Stat. Ann. § 45a-251 and see *Wheat v. Wheat*, 244 A.2d 359 (Conn. 1968)).

### WITNESS REQUIREMENTS

A will must be attested to by two witnesses, both of which must sign the will in the presence of the testator (Conn. Gen. Stat. Ann. § 45a-251). There is no requirement that the witnesses actually see the testator sign the will, although having the testator sign the will in the presence of the witnesses is standard practice and can be helpful if questions of validity and proper execution arise later when the will is admitted to probate. At least one of the witnesses to the will also must at least have the opportunity to see the testator's signature on the will (*Wheat v. Wheat*, 244 A.2d 359 (Conn. 1968)).

The witnesses to a will should not be beneficiaries of the will or spouses of beneficiaries. A devise or bequest to a subscribing witness or the spouse of a subscribing witness is void unless the will is legally attested without the signature of that witness, unless the beneficiary witness is also an heir of the testator (Conn. Gen. Stat. Ann. § 45a-258).

A beneficiary or the spouse of a beneficiary may serve as a witness to a codicil when the codicil does not change the beneficiaries or the amount or nature of any of the gifts under the existing testamentary documents (*La Croix v. Senecal*, 99 A.2d 115 (Conn. 1953)).

### NOTARY REQUIREMENTS

**A will does not need to be notarized to be validly executed in Connecticut.**

### SAMPLE ATTESTATION CLAUSE

**It is standard practice to include an attestation clause before the witness signatures in a will, as the recitals in an attestation clause help to establish the proper execution of the will. However, no attestation clause is required under Connecticut law.**

SIGNED, SEALED, PUBLISHED and DECLARED by [NAME OF TESTATOR/TESTATRIX], the Testator/Testatrix, as and for his/her Last Will and Testament, in the presence of us and each of us, who, at his/her request, in his/her presence and in the presence of each other, have hereunto subscribed our names as witnesses on the day of the execution thereof.

The witnesses sign the will and provide their addresses in the space directly below the attestation clause.

### SELF-PROVING AFFIDAVIT

A self-proving affidavit is not required to create a valid will. However, Connecticut authorizes the use of affidavits by any witnesses subscribing to wills executed in Connecticut stating the facts that

they must testify to in court to prove the will. The witnesses can sign the affidavit at the request of the testator or, if the testator is deceased, at the request of the executor or any person interested in the will. The Probate Court must accept the affidavit as if it had been taken before the court. (Conn. Gen. Stat. Ann. § 45a-285.)

For an example of a Connecticut self-proving affidavit, including signature and witness lines and an attestation clause, see Standard Clause, Signature Pages for Will and Self-Proving Affidavit (CT) ([w-007-9387](#)).

### ELECTRONIC WILL EXECUTION REQUIREMENTS

Connecticut does not permit electronic wills.

### LIMITATIONS ON GIFTS TO FIDUCIARIES AND ATTORNEY DRAFTSPERSON

#### 7. Are there any limitations on beneficiaries a testator can name in a will? In particular, please specify if a will can provide for gifts to:

- Executors.
- Gifts to trustees named in the will.
- Gifts to guardians.
- The lawyer who drafted the will.

### GIFTS TO EXECUTORS

In Connecticut, a will can generally provide for gifts to executors.

### GIFTS TO TRUSTEES NAMED IN THE WILL

In Connecticut, a will can generally provide for gifts to trustees named in the will.

### GIFTS TO GUARDIANS

In Connecticut, a will can generally provide for gifts to guardians.

### GIFTS TO LAWYER DRAFTSPERSON

There is no statute in Connecticut barring an attorney who drafted a will for a client from inheriting under that will (*Sandford v. Metcalfe*, 954 A.2d 188, 192-93 (Conn. App. 2008)). However, dealings between a draftsman attorney and the testator are considered prima facie fraudulent, meaning that the burden rests on the draftsman attorney to show fairness, adequacy, and equity to receive a bequest under the testamentary instrument (*Sandford v. Metcalfe*, 954 A.2d 188, 191-93 (2008)).

Under the Connecticut Rules of Professional Responsibility, a lawyer may not prepare on behalf of a client an instrument giving the lawyer any substantial gift unless the lawyer is related to the client (Rules of Prof. Conduct, Rule 1.8).

### RIGHTS OF FAMILY MEMBERS TO INHERIT

#### 8. Are a testator's will bequests affected by community property laws, elective share laws, or other local laws that prohibit a testator from excluding a beneficiary from taking a share in the estate? In particular, please specify if a will can disinherit:

- The testator's spouse.
- A child of the testator.

### DISINHERITING A TESTATOR'S SPOUSE

In Connecticut, a testator cannot unilaterally disinherit the testator's spouse. Connecticut has an elective or statutory share statute, which allows a surviving spouse to elect against the terms of a will and claim a statutory share of a life estate of one-third of the value of all the property passing under the will after the payment of all debts and charges against the estate. (Conn. Gen. Stat. Ann. § 45a-436(a).)

If provision is made in the will of the decedent for the surviving spouse, it is deemed to be made in lieu of the statutory share unless the will clearly states otherwise (Conn. Gen. Stat. Ann. § 45a-436(b)). However, the surviving spouse can still elect to take the statutory share instead of what has been provided for the surviving spouse under the will.

Unlike some other states, Connecticut's statutory share statute does not take into account property passing outside of the will. The election to take a statutory share entitles the surviving spouse only to a life estate in one-third in value of the probate estate. (*Cherniack v. Home Nat. Bank & Trust Co. of Meriden*, 198 A.2d 58 (Conn. 1964) and *Dalia v. Lawrence*, 627 A.2d 392 (Conn. 1993).)

A spouse can release the spouse's right to elect against the will by a written contract entered into before or after a marriage if the survivor received consideration for entering into the contract (Conn. Gen. Stat. Ann. § 45a-436(f)). Connecticut recognizes that marriage itself can be valuable consideration for the agreement to be binding. Consideration exists where there is a mutual renunciation of interest or claim in the property of the other. (*Sackell v. Sackell's Estate*, 12 Conn. Supp. 139 (1943).) Therefore, when parties enter into an antenuptial agreement, the agreement may be supported by either:

- The consideration of marriage.
- The relinquishment of the spouses' mutual spousal property rights.

(*Sackell v. Sackell's Estate*, 12 Conn. Supp. 139 (1943).)

Prenuptial and antenuptial agreements are not void as against public policy (see *Parniawski v. Parniawski*, 359 A.2d 719 (Conn. Super. Ct. 1976)).

If a surviving spouse married the testator *after* the execution of the testator's will and the testator's will does not provide for the surviving spouse, the surviving spouse is entitled to receive the same share of the estate the surviving spouse otherwise receives if the decedent left no will, unless either:

- It appears from the will that the omission was intentional.
- The testator provided for the spouse by transfer outside the will and the intent that the transfer be in place of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(Conn. Gen. Stat. Ann. § 45a-257a.)

If a surviving spouse receives property in this situation, they may not elect to take a statutory share (Conn. Gen. Stat. Ann. § 45a-257a).

### DISINHERITING A CHILD OF THE TESTATOR

In Connecticut, a child has no right to inherit from a testator against the terms of the testator's will except in situations where the child:

- Was born after the execution of the testator's will.

- Was adopted after the execution of the testator's will.
- Was born as a result of artificial insemination to which the testator had consented.

(Conn. Gen. Stat. Ann. § 45a-257b(a).)

The inheritance right is dependent on the number of children the testator had at the time the will was executed and if the other parent survives the testator and is entitled to take under the will (Conn. Gen. Stat. Ann. § 45a-257b(a)). Specifically:

- If the testator had no child living, an omitted after-born or after-adopted child receives what the omitted after-born or after-adopted child otherwise receives had the testator died intestate, unless the will gave all or substantially all to the other parent and the other parent is alive and entitled to take under the will.
- If the testator had one or more children living and the will devised or bequeathed property to one or more of the children, an omitted after-born or after-adopted child is entitled to receive the portion the omitted after-born or after-adopted child otherwise receives if the testator included all the children and had given an equal share to each.
- If it appears from the will that the testator's intention was to make a limited provision that specifically applied only to the testator's then-living children, the omitted after-born or after-adopted child is entitled to an intestate share.

(Conn. Gen. Stat. Ann. § 45a-257b(a).)

An after born or after adopted child cannot inherit under the testator's will if either:

- It appears from the will that the omission from the will was intentional.
- The testator transferred property to the child outside of the will and the testator intended that the transfer be in place of a testamentary provision, shown by the testator's statements or reasonably inferred from the amount of the transfer or other evidence.

(Conn. Gen. Stat. Ann. § 45a-257b(b).)

If a child was omitted because the testator thought the child was dead, the child may be able to receive property as if the child were an after-born or after-adopted child (Conn. Gen. Stat. Ann. § 45a-257b(c)).

Connecticut law does not prohibit the intentional disinheriting a child of the testator. However, the probate court has discretion to provide support for the surviving spouse or family of the deceased during the settlement of the decedent's estate. The court can but need not further order that the support amount must be charged against the share of income the surviving spouse or family member is otherwise entitled to from the estate. (Conn. Gen. Stat. Ann. § 45a-320.)

The statute does not specify that the discretion of the court to make this allowance is dependent, in any way, on the support recipient otherwise being entitled to a share of the estate under the decedent's will. So it is possible that an otherwise disinherited child may receive some benefits from the estate despite the intent of the decedent, if the court deems it necessary.

If the testator's intention is to disinherit a child or any other person, there is no need to specifically say that in a will in Connecticut.

The omission of the child from the will is sufficient. However, the will should still make an affirmative statement clarifying that the disinheritance was intentional, both to avoid questions about mistake and capacity as well as to explain the reasons for the disinheritance if the testator is so inclined.

## COMMON WILL PROVISIONS

### 9. Discuss specific provisions commonly found in a will and the rules that apply to these provisions in your state. In particular, please discuss the following provisions and their effect:

- Incorporation by reference.
- Disposition of remains or for funeral wishes.
- No-contest clause.
- Rule against perpetuities.
- Sample rule against perpetuities clause.

## INCORPORATION BY REFERENCE

Connecticut does not recognize incorporation by reference.

## DISPOSITION OF REMAINS OR FOR FUNERAL WISHES

Connecticut law neither requires nor prohibits expressing directions or wishes for the disposition of a testator's remains and funeral and burial instruction. However, it is generally advisable that the will not be the only place the instructions and wishes are memorialized. Funeral arrangements are often made and remains disposed of before the will is found or read by the family, so the testator's directions should also be in another place, such as an advance directive or other outside writing. Some testator's still want to emphasize their wishes by including the instructions in their wills, especially where the instructions are specific and limiting in nature. In this case, Connecticut case law suggests that the funeral wishes of the deceased as expressed in the will should be given great deference. *In re Baskin's Appeal from Probate*, 484 A.2d 934 (Conn. 1984).

It is possible in Connecticut to execute a separate document directing the disposition of remains or designating a person to have custody of the remains, or both. A statutory form of Disposition of Remains and Appointment of Agent is provided in Connecticut law. The use of the statutory form is not required and other forms can be used as well. (Conn. Gen. Stat. Ann. § 45a-318(e).)

Any competent adult can execute a document directing the disposition of the adult's remains and designating the person to have custody of the remains to carry out those wishes. The document need not address both the disposition and name a custodian. It can address either or both areas. The document must be signed by the person making the direction or designation, or both, in the presence of two witnesses. (Conn. Gen. Stat. Ann. § 45a-318.)

If there is no document that directs disposition and custody, custody and control of the decedent's remains is governed by statute and is given in the following order of priority:

- The decedent's surviving spouse.
- The decedent's children.
- The decedent's parents.
- The decedent's siblings.

- More remote relatives of the decedent.
- Any person designated by the probate court having jurisdiction over the decedent's estate as agent for the disposition of the decedent's remains.

(Conn. Gen. Stat. Ann. § 45a-318(c).)

The custodian of the decedent's remains is not liable for funeral or disposition expenses (Conn. Gen. Stat. Ann. § 45a-318 and see *Dennis v. Shaw*, 78 A.2d 691 (Conn. 1951)). Rather, the statute is meant to avoid unseemly controversies over the remains of deceased persons (Conn. Gen. Stat. Ann. § 45a-318 and see *Dennis v. Shaw*, 78 A.2d 691 (Conn. 1951) and *Tkaczyk v. Gallagher*, 222 A.2d 226 (Conn. Super. Ct. 1965)).

#### NO-CONTEST CLAUSE

A no-contest or in-terrorem clause is an optional provision in a will that provides that a beneficiary contesting the terms of the will forfeits the beneficiary's right to take under the will. No-contest clauses are included in wills to discourage beneficiaries from challenging the will. Connecticut law on no-contest clauses is not entirely clear. Although no-contest clauses are generally enforceable, the Connecticut Supreme Court has held that will contests initiated with probable cause or good faith may not trigger a loss of interests under a will containing a no-contest clause (see *South Norwalk Trust Co. v. St. John*, 101 A. 961 (Conn. 1917)).

Whether beneficiary participation in proceedings brought by another party results in a forfeiture of rights may depend on the nature of the participation and the position taken relative to the validity or execution of the will (see *Bankers Trust Co. v. Pearson*, 99 A.2d 224 (Conn. 1953), *Griffin v. Sturges*, 40 A.2d 758 (Conn. 1944)), and *Re Estate of F. B. Andrews Probate Appeal*, 1991 WL 157657 (1991)).

Forfeiture clauses cannot be waived by agreement of all of the beneficiaries of the will. These clauses need not contain alternative dispositive provisions to be enforceable. (*South Norwalk Trust Co. v. St. John*, 101 A. 961 (Conn. 1917) and *Peiter v. Degenring*, 71 A.2d 87 (Conn. 1949).)

#### RULE AGAINST PERPETUITIES

Connecticut follows the common-law rule against perpetuities which requires all property interests to vest within 21 years after the death of an individual alive at the creation of the interest (Conn. Gen. Stat. Ann. § 45a-491). Until September 30, 1989, this common-law rule was supplemented by Connecticut's second-look statute, which allowed the common law rule to be tested on the basis of known facts after the measuring lives have ended rather than projections of facts undertaken at common law at the creation of the trust (Conn. Gen. Stat. Ann. § 45a-503).

In 1989, Connecticut repealed the second look statute and codified the common law rule by enacting the Uniform Statutory Rule Against Perpetuities Act (Conn. Gen. Stat. Ann. §§ 45a-490 to 45a-496). Accordingly, Connecticut law requires that all donative property interests, when created, be certain to vest or terminate no later than 21 years after the death of an individual then alive (Conn. Gen. Stat. Ann. §§ 45a-490). However, in a kind of second look alternative, the statute validates transfers subject to the rule against perpetuities if they in fact vest or terminate within 90 years from the time of their

creation (Conn. Gen. Stat. Ann. §§ 45a-490). Courts are empowered, in specific circumstances, to reform a transfer at the request of any interested person to comply with the 90-year savings provision (Conn. Gen. Stat. Ann. §§ 45a-493).

The consequences of a violation of the rule against perpetuities depend on the intention of the original holder of the property (*Second Nat. Bank of New Haven v. Harris Trust and Sav. Bank* 283 A.2d 226 (Conn. Super. Ct. 1971)). Therefore, any portion of a testamentary trust invalidated under the rule against perpetuities usually passes as a part of the testator's residuary estate, as provided in the will. If the residuary estate is invalidated, the property is distributed according to laws of intestacy (*Connecticut Bank and Trust Co. v. Brody*, 392 A.2d 445 (1978)).

#### SAMPLE RULE AGAINST PERPETUITIES PROVISION

I realize that the law imposes certain limits upon the duration of trusts, and, accordingly, regardless of any other provision of my Will, each trust established under my Will or created pursuant to the exercise of a power of appointment granted under my Will shall terminate not later than twenty years after the death of the last to die of all of the descendants of my parents [and all of the descendants of my spouse's parents] living on the date of this document, and my Trustees shall distribute any remaining trust property to the income beneficiary, or, if there is more than one income beneficiary, to any one or more of the income beneficiaries in such proportions as my Trustees in their absolute discretion consider advisable.

#### EXECUTORS

##### 10. What are the rules regarding executor appointments in your state? In particular, please discuss:

- The terminology that is used to identify the person who is in charge of the estate (referred to here as the executor).
- Criteria for qualifying as an executor, including limitations on who a testator can name as executor.
- Rules regarding compensation of executors.
- Whether the drafting attorney can serve as executor.
- Priority rules for appointment of executor if the named executor fails to qualify.
- Who has authority to act when there are multiple executors.

#### TERMINOLOGY USED TO IDENTIFY PERSON IN CHARGE OF ESTATE

In Connecticut, the person placed in charge of an estate is referred to as the executor.

#### QUALIFICATION AS EXECUTOR

An individual residing in Connecticut may act as executor of a Connecticut estate. An individual not residing in Connecticut may also act as executor if that individual appoints the appropriate Connecticut probate court as the individual's agent for service of process (Conn. Gen. Stat. Ann. § 52-61). A testator may select an individual executor to act even if the individual is a beneficiary under the will (*Farmers' Loan & Trust Co. v. Smith*, 51 A. 609 (Conn. 1902)).

A Connecticut bank may qualify as an executor (Conn. Gen. Stat. Ann. § 36a-250(a)(7)). If a national bank is located in Connecticut,

it may also qualify as an executor. A foreign bank may serve as an executor in Connecticut if Connecticut banks are permitted to act as executor in the state where the foreign bank is located. The foreign bank must also appoint the Connecticut Secretary of State, in writing, as its agent for service of process. (Conn. Gen. Stat. Ann. § 45a-206.)

### COMPENSATION OF EXECUTORS

An executor is entitled to reasonable compensation for serving as executor. Reasonableness of a fiduciary fee is a fact and circumstances analysis that takes into account factors, such as:

- The size of the estate.
- The responsibilities involved.
- The character of the work required.
- The special problems and difficulties met in doing the work.
- The results achieved.
- The knowledge, skill, and judgment required of and used by the executors.
- The manner and promptness with which the estate has been settled.
- The time and service required.
- Any other relevant and material circumstances.

(Conn. Prob. Ct. R. & Proc. § 39.2 and see *Hayward v. Plant*, 119 A. 341 (Conn. 1923).)

A bank acting as executor generally charges based on a fee schedule and may assess additional charges for special services to the estate, such as selling real estate (*Estate of Alan Tinger*, 5 Conn. Prob. L. J. 194 (Westport, 1989)). Additional language should be included in a will to control these costs. For example, the will may provide that a corporate fiduciary is to receive compensation based on a published fee schedule, including minimum fees and additional compensation for special investments and other special assets or it may limit compensation to the published rates while disallowing minimum fees and additional compensation based on the nature of the assets.

### DRAFTING ATTORNEY AS EXECUTOR

In Connecticut, a drafting attorney may serve as executor. Named attorneys may also nominate other attorneys to serve as executors because it is presumed that the testator is likely to trust the named attorney's judgment. (*Estate of Eileen Milward Bruce, Deceased*, 16 Quinnipiac Prob. L. J. 24 (2002).)

### FAILURE OF NAMED EXECUTOR TO QUALIFY

If a named executor fails to qualify and no successor is named in the will, the following persons, in order of priority, are able to serve:

- Surviving spouse.
- Any child (or any guardian of a child).
- Any grandchild (or guardian of a grandchild).
- Parent.
- Brother or sister.
- Next of kin entitled to share in the estate.
- Any other person the court deems proper.

(Conn. Gen. Stat. Ann. §§ 45a-290 and 45a-303(c).)

In determining the priority of persons entitled to serve, any person entitled to a bequest or devise under the will is given priority (Conn. Gen. Stat. Ann. §§ 45a-290 and 45a-303(c)).

### MULTIPLE EXECUTORS

Under common law, co-executors in Connecticut are considered one person and, therefore, the act of one co-executor binds all acting executors (see *Foster v. Mix*, 1850 WL 691 (Conn. 1850)). However, the terms of the will may require that executors act by majority rule or unanimously. As the case law discusses the personal property of the decedent and not real property, it also may be that the exercise of special powers, such as the power to sell real estate, requires unanimity of executors unless the will provides otherwise. It is therefore good practice to specify in the will whether decisions of multiple executors require a majority or the unanimous action of all of the executors to be effective.

#### 11. What are the rules regarding appointment of trustees for testamentary trusts in your state? In particular, please discuss:

- Criteria for qualifying as a trustee.
- Rules regarding compensation of trustee.
- Priority rules for appointment of trustee if the named trustees fail to qualify.
- Who has authority to act when there are multiple trustees.

### QUALIFICATION AS TRUSTEE

An individual residing in Connecticut may act as trustee. A non-resident may serve as trustee if the non-resident appoints the appropriate Connecticut probate court as the non-resident's agent for service of process. (Conn. Gen. Stat. Ann. § 52-61.)

A Connecticut bank may serve as trustee (Conn. Gen. Stat. Ann. § 36a-250(a)(7)). If a national bank is located in Connecticut, it may also serve as trustee (*Hamilton v. State*, 110 A. 54 (1920)). A foreign bank may serve if:

- Connecticut banks are permitted to act as trustees in the state where the foreign bank is located.
- The foreign bank appoints the Connecticut Secretary of State, in writing, as its agent for service of process.

(Conn. Gen. Stat. Ann. § 45a-206.)

### COMPENSATION OF TRUSTEE

A trustee is entitled to reasonable compensation for serving as fiduciary. Reasonableness of a fiduciary fee is a fact and circumstances analysis that takes into account factors, such as:

- The size of the estate.
- The responsibilities involved.
- The character of the work required.
- The special problems and difficulties met in doing the work.
- The results achieved.
- The knowledge, skill and judgment required of and used by the executors.
- The manner and promptitude with which the estate has been settled.

- The time and service required.
- Any other circumstances which may appear in the case and are relevant and material to this determination.

(Conn. Prob. Court. Rule 39.2 and see *Hayward v. Plant*, 119 A. 341 (Conn. 1923).)

### FAILURE OF NAMED TRUSTEE

In Connecticut, if a named trustee fails or ceases to act and no successor is named in the will, a petition for the appointment of a successor must be made in the court of probate having jurisdiction. (Conn. Gen. Stat. Ann. § 45a-98(4)(A).)

### MULTIPLE TRUSTEES

Under Connecticut law, multiple trustees must act unanimously unless the will provides otherwise (*Buttner v. Planning & Zoning Commission of the Town of Westport*, 1994 WL 174308 (1994)) and *Hartford Nat. Bank and Trust Co. v. Willard*, 398 A.2d 1186 (1978)).

## GUARDIANS

### 12. What are the rules regarding appointment of guardians for minor children by will in your state? In particular, please discuss:

- Criteria for qualifying as a guardian.
- Whether a guardianship nomination in the will is binding or persuasive.
- At what age the guardianship terminates.

### QUALIFICATION AS GUARDIAN

The parent of an unmarried minor may appoint a guardian or guardians of the minor by a will or other writing signed by the parent and by at least two witnesses. However, the appointment does not supersede the previous appointment of a guardian made by the probate court. (Conn. Gen. Stat. Ann. § 45a-596(a).)

A parental appointment becomes effective when the guardian's written acceptance is filed in the court in which the will is probated or, in the case of a nontestamentary document, in the court for the probate district where the minor lives (Conn. Gen. Stat. Ann. § 45a-596(c)). When the minor reaches age 12, the minor may apply to the probate court where the minor lives for a substitute guardian (Conn. Gen. Stat. Ann. § 45a-596(b)). A court must take into consideration the following factors:

- The ability of the guardian to meet the daily physical, emotional, moral, and educational needs of the minor;
- The minor's wishes, if the minor is over the age of 12 or is sufficiently mature and capable of forming an intelligent preference;
- Whether or not there is already a relationship between the minor and the guardian;
- The child's best interests.

(Conn. Gen. Stat. Ann. § 45a-617.)

### GUARDIANSHIP BINDING OR PERSUASIVE

A Connecticut court does not have the power to appoint a guardian other than the person designated in the will of the child's parent

unless there is evidence that it is detrimental to the child because it is presumed that the parent is in the best position to determine what is in the child's best interest (see *Bristol v. Brundage* 589 A.2d 1 (Conn. App. Ct. 1991) and *In re Joshua S.*, 796 A.2d 1141 (Conn. 2002)).

### TERMINATION OF GUARDIANSHIP

Guardianship terminates at age 18 (Conn. Gen. Stat. Ann. §§ 1-1d and 45a-604(4)).

## CHANGES TO WILL AFTER EXECUTION

### 13. What are the rules regarding changes to a will after it is executed? In particular, please specify:

- How a will can be modified after it is executed.
- How a will can be revoked after it is executed.
- Whether a previously revoked will can be reinstated, and if so, how.

### MODIFICATION OF A WILL

A will can be modified by codicil. A codicil may either:

- Revoke any portion of an existing will, with or without the substitution of new language.
- Add new language to an existing article or a new article to a will without the revocation of any portion of the existing will.

For a codicil to be valid, it must be executed with the same formalities as a will (Conn. Gen. Stat. Ann. § 45a-251 and see Permissible Form of Will and Will Execution Requirements). Merely making adjustments to an existing will, such as the testator crossing out a specific bequest and then signing the testator's name, does not meet Connecticut's formal requirements for codicils or revocation (see *Estate of Emma N. Stursberg*, 13 Quinnipiac Prob. L.J. 179 (Conn. Prob. Ct. Woodbridge Dist. June 9, 1998)).

### REVOCAION OF A WILL

A testator can revoke a will or codicil by either:

- Burning, cancelling, tearing, or obliterating it (or by directing someone in the testator's presence to do so).
- Executing a later will or codicil that revokes the original.

(Conn. Gen. Stat. Ann. § 45a-257.)

A will must show some evidence of a destructive act as the statute prescribes to constitute a revocation. The mere intent to perform one or more of the acts required for revocation is insufficient to revoke the will. (*Harchuck v. Campana*, 95 A.2d 566, 568 (Conn. 1953).) For example, a declaration, subscribed by the testator, on the back of the testator's will stating, "This Will is invalid," was considered an express revocation of the will, even though it had not been attested to by any subscribing witnesses (*Witter v. Mott*, 2 Conn. 67, 68-69 (1816)). However, merely stating to a witness, after showing an envelope containing a will, that the will should be destroyed and locking the will in a drawer did not meet the requirements for revoking a will under the statute (*Appeal of Goodsell*, 10 A. 557 (Conn. 1887)).

Certain events after the execution of a will may affect disposition of a testator's property, including:

- Marriage after the execution of a will (Conn. Gen. Stat. Ann. § 45a-257a and see Effect of Marriage).
- Children being born or adopted after the execution of a will (Conn. Gen. Stat. Ann. § 45a-257b and see After-Born Child).
- Termination of a marriage after the execution of a will (Conn. Gen. Stat. Ann. § 45a-257c and see Effect of Divorce).

#### REINSTATEMENT OF A WILL

Connecticut recognizes dependent relative revocation. Under this rule, when the intention to revoke a will is conditional and the condition is not fulfilled, the revocation is not effective. The rule is applicable in cases of partial as well as total revocation. (*Churchill v. Alessio*, 719 A.2d 913, 916 (Conn. App. Ct. 1998).)

If a testator destroys the testator's will with the intention of making a new one immediately as a substitute and a new will is not made or if the new will fails for another reason, it is presumed that the testator preferred the disposition of the testator's property under the old will to intestacy (*La Croix v. Senecal*, 99 A.2d 115, 117 (Conn. 1953)). This doctrine is merely a rule of presumed intention on the part of the testator, not substantive law, and raises a presumption that prevails in the absence of sufficient rebuttal evidence (*Connecticut Bank & Trust Co. v. Coles*, 192 A.2d 202, 205 (Conn. 1963)).

#### SPECIAL CIRCUMSTANCES REGARDING GIFTS OR RECIPIENTS

##### 14. Please describe what happens if:

- A beneficiary does not survive the testator.
- A gift is not owned by the testator at the testator's death.
- There are not enough assets passing through the will to satisfy all the gifts.
- The gifted property is encumbered.
- The testator and a beneficiary or fiduciary to which the testator was married when the will was executed are no longer married when the testator dies.
- The testator gets married after the will is executed.
- A child is born after the will is executed.
- A beneficiary causes the testator's death.
- The testator and a beneficiary die at the same time.

#### BENEFICIARY DOES NOT SURVIVE

Unless Connecticut's anti-lapse statute applies, if a beneficiary under a will does not survive, property intended for that beneficiary passes as part of the residuary estate (*Bridgeport Trust Co. v. Parker*, 116 A. 182 (Conn. 1922)). The Connecticut anti-lapse statute provides that when a beneficiary that is an heir of the testator dies before the testator and no provision is made in the will for that contingency, the pre-deceased beneficiary's issue inherits the beneficiary's share (Conn. Gen. Stat. Ann. § 45a-441). Half-siblings and their issue are included in Connecticut's anti-lapse statute but spouses and brothers-in-law and sisters-in-law are not included (see *Seery v. Fitzpatrick*, 65 A. 964 (Conn. 1907), *Bergin v. Bergin*, 490 A.2d

543 (Conn. App. Ct. 1985), and *VonNeida v. Estate of Harthon*, 2001 WL 100366 (Conn. Super. Ct. 2001)).

It is important to clearly state when a gift in the will should lapse if that is the testator's intent. Mere words of survivorship under a will do not avoid application of the anti-lapse statute. Necessary proof sufficient to establish that the testator had the intent contrary to the anti-lapse statute includes an alternate gift or the testator's unequivocal expression of intent to negate the anti-lapse statute. (*Ruotolo v. Tietjen*, 890 A.2d 166 (Conn. App. Ct. 2006), *aff'd* 916 A.2d 1 (Conn. 2007).)

#### GIFT NOT OWNED BY TESTATOR AT DEATH

In Connecticut, a specific bequest of property that is not owned by a testator at death adeems (that is, the gift fails completely). No gift is substituted for the adeemed property unless the will specifically provides otherwise. (See *Alexander v. House*, 54 A.2d 510 (Conn. 1947); *Connecticut Trust & Safe Deposit Co. v. Chase*, 55 A. 171 (Conn. 1903), *Burnham v. Hayford*, 104 A.2d 217 (Conn. 1954); and *Simmons v. McKone*, 255 A.2d 822 (Conn. 1969).) However, if the proceeds of property specifically bequeathed but not owned by the testator at death are traceable, this may prevent the ademption and the proceeds may be distributed in place of the specifically bequeathed property (*Speyers v. Manchester*, 41 A.2d 783 (Conn. 1945)).

#### NOT ENOUGH ASSETS

If the personal property of the testator is insufficient for the payment of debts and administration expenses, pecuniary bequests are to be used to cover the balance of expenses (Conn. Gen. Stat. Ann. §45a-426(a)). Specific legacies, on the other hand, are not to be used for the payment of debts and charges against the estate of the testator when there is other property, real or personal, sufficient and available therefore and not specifically devised or bequeathed (Conn. Gen. Stat. Ann. §45a-426(b)). Specifically devised real property is the last asset of an estate to be used for payment of debts and administration expenses (See *Leavenworth v. Shea*, 1996 WL 677449 (Conn. Super. Ct. Nov. 8, 1996)).

#### GIFTED PROPERTY ENCUMBERED

Encumbered property subject to a lien or security interest passes to a beneficiary with the encumbrance. The will may provide otherwise, but a general provision in the will for the payment of debts is not sufficient for the fiduciary to satisfy the encumbrance out of the decedent's assets. (Conn. Gen. Stat. § 45a-266(a).)

#### EFFECT OF DIVORCE

Unless the will expressly provides otherwise, if the testator's marriage is terminated by dissolution, divorce, or annulment, the event revokes:

- Any disposition in the will to the former spouse.
- Any provision conferring a general or special power of appointment on the former spouse.
- Any nomination of the former spouse as a fiduciary. In this event, the property passing under the will passes as if the former spouse predeceased the testator.

(Conn. Gen. Stat. Ann. § 45a-257c.)



## EFFECT OF MARRIAGE

If a testator marries after the execution of a will and the will does not provide for the surviving spouse, the surviving spouse is entitled to receive the same share of the estate the surviving spouse otherwise receives if the testator left no will unless one of the following is true:

- It appears from the will that the omission was intentional.
- the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(Conn. Gen. Stat. Ann. § 45a-257a.)

## AFTER-BORN CHILD

A child born or adopted after the execution of the will (including children born resulting from artificial insemination to which the testator has consented) receives a share in the estate as follows:

- If there were no children when the will was executed, the after-born or after-adopted child receives a share in the testator's estate equal to what the child otherwise receives if the testator had died intestate, unless the will gave all or substantially all of the estate to the child's parent surviving the testator and is entitled to take under the will.
- If there were one or more children living when the will was executed, the after-born or after-adopted child receives the share of the estate that the child otherwise receives had the testator included the after-born children with the children provided for under the will and had given an equal share of the estate to each child, subject to the following restrictions:
  - the portion of the testator's estate in which the after-born or after-adopted child is entitled to share is limited to devises and legacies made to the testator's then-living children under the will;
  - to the extent possible, the interest passing to the after-born or after-adopted child must be of the same character, whether equitable or legal, present or future, as that devised or bequeathed to the testator's then-living children under the will;
  - in satisfying devises and legacies passing to the testator's children living when the will was executed, the devises and legacies abate ratably, and in the abatement of the devises and legacies of the then-living children, to the maximum extent possible the character of the testamentary plan adopted by the testator must be preserved; and
  - if it appears from the will that the testator intended to make a limited provision which specifically applied only to the testator's living children at the time the will was executed, the after-born or after-adopted child succeeds to the portion of the testator's estate as is otherwise passed to the child had the testator died intestate.

(Conn. Gen. Stat. Ann. § 45a-257b(a).)

These provisions do not apply if it appears from the will that the omission of the after-born child was intentional or the testator provided for the after-born or after-adopted child outside the will (Conn. Gen. Stat. Ann. § 45a-257b(b) and see *Disinheriting a Child of the Testator*).

## BENEFICIARY CAUSES TESTATOR'S DEATH

Connecticut law prohibits a beneficiary found guilty as the principal or accessory of the testator's death from inheriting or receiving either:

- Any part of the estate of the deceased victim.
- From the estate of any other person if the testator's death terminated an intermediate estate or hastened the time of enjoyment.

(Conn. Gen. Stat. Ann. § 45a-447).

## SIMULTANEOUS DEATH

Unless the will contains a survivorship provision, when there is insufficient evidence of survivorship and the title to property depends on the order of deaths, the property of each person is disposed of as if the person had survived (Conn. Gen. Stat. Ann. § 45a-440).

Cash legacies vest at death unless the will contains a survivorship provision (*Dale v. White*, 33 Conn. 294 (1866)).

## LOST WILLS

### 15. Please describe what happens if the original will is lost.

In Connecticut, if a will cannot be found after the death of the testator, a rebuttable presumption arises that the testator destroyed the testator's will with the intent to revoke. If the presumption of revocation arises, the burden is on the proponent to rebut the presumption by clear and satisfactory proof. (*Ferris v. Faford*, 890 A.2d 602, 610 (Conn. App. Ct. 2006) and *Patrick v. Bedrick*, 362 A.2d 987, 988-89 (Conn. 1975).)

An exception to this rule exists where the will was last known to be in the charge of another person. In this case, it is presumed that the will was lost and not revoked because if another person possessed the testator's will and the will was not in the testator's presence, then the testator cannot form the requisite intent to revoke the will. (*Ferris*, 890 A.2d at 610.)

Proving loss and rebutting the presumption of revocation may be made by direct evidence explaining the disappearance. It may also be proven circumstantially by the fact of non-discovery after diligent search. (*Waller v. Eleventh School Dist., in Town of New Milford*, 1853 WL 768 (Conn. 1853).) Mere ignorance of the whereabouts of the original will is not sufficient proof of loss (*State v. De Wolf*, 1830 WL 17 (Conn. 1830)). The presumption of revocation may also be overcome by evidence of the recent declarations of the testator that show an understanding that the testator's will remained unrevoked (*Appeal of Spencer*, 60 A. 289 (Conn. 1905)). If the nonproduction of the original will is excused, proof of its contents by copy is preferred to proof by recollection of the contents. Proof of the contents of a lost will must be clear and satisfactory, although there is no rule requiring the offering of the contents by more than one witness. Except in the case of the simplest of wills, providing clear and satisfactory proof by mere recollection is nearly impossible. (*In re Johnson's Will*, 1874 WL 3167 (Conn. 1874).)

## RULES OF INTESTACY

**16. Please describe how property passes if there is no will or if the terms of the will distribute assets according to the laws of intestacy in your state (who are the testators heirs).**

If there is no will or if any property if a decedent is not effectively disposed of by the decedent's will, the estate assets are distributed according to the statutes governing intestate succession (Conn. Gen. Stat. Ann. §§ 45a-437 to 45a-439).

Under the Connecticut intestacy statutes, if the decedent dies leaving a surviving spouse, decedent's estate is distributed as follows:

- If the decedent had no surviving issue and no surviving parent, the entire estate is distributed to the decedent's spouse.
- If the decedent had no surviving issue but had a surviving parent or parents, the first \$100,000 plus three-quarters of the balance of the estate is distributed to the spouse.
- If the decedent had surviving issue all of which are also issue of the surviving spouse, the first \$100,000 plus one-half of the balance of the estate is distributed to the spouse.

- If the decedent had surviving issue and least one of the surviving issue is not also issue of the surviving spouse, one-half of the estate is distributed to the spouse.

(Conn. Gen. Stat. Ann. § 45a-437.)

After the amount is set aside for the surviving spouse (if any), the balance of the estate is distributed equally to the decedent's children, including the legal representative of any deceased children (Conn. Gen. Stat. Ann. § 45a-438).

If the decedent died without a surviving spouse or children (or legal representatives of deceased children), the estate is distributed:

- Equally to the decedent's parents.
- If there are no parents, equally to the decedent's siblings or the legal representatives of any deceased siblings.
- If there are no siblings, equally to the decedent's next of kin, in equal degree.
- If there is no next of kin, equally to the decedent's stepchildren, if any.

(Conn. Gen. Stat. Ann. § 45a-439.)

### ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at [legalsolutions.com/practical-law](https://legalsolutions.com/practical-law). For more information or to schedule training, call **1-800-733-2889** or e-mail [referenceattorneys@tr.com](mailto:referenceattorneys@tr.com).