



## **WAFER INSTRUCTIONS FOR VOLUNTEER ATTORNEYS**

Legal Access Alameda is deeply grateful to Paula Goodwin and the law firm of Perkins Coie for their creation of this program, and for their creation of a video, forms, and instructions (from which the instructions below are adapted). Legal Access Alameda could not have launched this program without this assistance and support.

### **Project Overview:**

In the Covid-19 era, healthcare workers and first responders are on the front lines of the pandemic, and unfortunately need to be planning for the possibility of serious illness or death. But they often do not have the resources or time to go through an entire estate planning engagement with an attorney. In light of that need, Legal Access Alameda and the Alameda County Bar Association are launching a program to provide limited pro bono legal assistance for healthcare workers and first responders with basic estate planning documents.

This program will enable these frontline workers to quickly prepare Statutory Wills, Power of Attorney forms, and Advance Health Care Directives. Information needed to prepare these documents will be available online at <https://disasterlegalservicesca.org/wafer/>; interested individuals will be directed to this webpage. The webpage contains an instructional video and other written materials, including fillable PDFs of the statutory forms, to help responders complete the documents on their own. Those who are unable to complete the forms or have questions after reviewing the materials will be able to contact Legal Access Alameda staff through the webpage and set up an appointment with a pro bono attorney.

Law students and other volunteers will contact the clients for a thorough intake and screening of potential clients. All intake volunteers will complete a fillable PDF intake form that includes all the information Legal Access needs to pair the client with a pro bono attorney and make sure the client is eligible for this service. There are no income requirements for assistance, however, these documents are basic and intended as a stopgap measure and may not be helpful to people with significant property or complicated family situations. The only requirement for pro bono assistance is that the client works for a healthcare provider or is a first responder.

This is where the volunteer attorneys come in! Legal Access staff will contact our pool of attorney volunteers when we have clients ready for a consultation and pair each client with a volunteer attorney. The volunteer attorney will then have the consultation and assist the client. There are more details on the logistics of the consultation process start on the next page.

Volunteer attorneys will materials to help with the consultation (including this document) on the WAFER volunteer page at <https://disasterlegalservicesca.org/waferattorney/>. Copies of the statutory forms and the training video by Perkins Coie LLP are also posted on that site. Please don't hesitate to reach out to our staff if you have any questions or concern at [willsassister@gmail.com](mailto:willsassister@gmail.com) or [legalaccessremote@acbanet.org](mailto:legalaccessremote@acbanet.org).



**1. OVERVIEW OF CONSULTATION PROCESS**

- a) Client Asks for Help: The process begins when a healthcare worker or first responder reaches out to us via our [willsassister@gmail.com](mailto:willsassister@gmail.com) email address and requests a consultation, many of the clients will have already reviewed a video about completion of these documents and attempted to complete them on their own.
- b) Intake: Law students and graduates will call the client to complete intake, find out exactly what the client needs assistance with, and return the completed intake to Legal Access staff.
- c) Attorney Sign-Up: Legal Access staff will reach out to volunteer attorneys and find out who is available to take this consultation. Legal Access will match the client with a volunteer attorney.
- d) Confirmation to Client: Legal Access staff will send the client confirmation of the appointment with you, the volunteer attorney, and attach the limited scope agreement.
- e) Confirmation to Attorney: Legal Access staff will send you the client’s intake, which includes contact information for the client.
- f) Consultation: Proceed with the consultation at the time of the scheduled appointment. You will call the client at the time of the appointment. If they do not pick up on the first try, please wait a few minutes and try again.
- g) Wrap Up: After the consultation is complete, fill out page 3 of the intake form with your summary of how the appointment went. Please flag if your client needs to speak with an expert estate planning attorney.

**Information to Help with Consultation**

Ideally the information below will have been collected during intake and saved into the intake form. If not provided, we will need you to obtain the following information from the healthcare worker you are consulting with:

- Full legal name
- Email
- Phone number
- Marital status
- Number of children
- Have you previously prepared any of the following documents:
  - Power of Attorney
  - Advance Healthcare Directive
  - Will and/or Living Trust
  - Estate Plan
- What they Need Help With

## 2. PRIOR TO CONSULTATION

**Before talking to a caller, please carefully read through these instructions first and make sure you have reviewed !**

**Limited Scope representation:** The client will have already been provided the Limited Scope Representation. It is important to note that you are not preparing a caller's estate plan. You are giving instructions to your caller so that **they** can prepare their own documents. This means that you should not volunteer to review their documents or advise them that you will be assisting them in any way after this call. In fact, the assumption is that you will not be advising them after this call. (Of course, they can email us again and schedule another consult.) Please understand this distinction and if you have questions about this, speak to Paula or a member of the PPG group. (See below for limited exception to this policy.) And thank you for volunteering!

## 3. INITIAL SCRIPT FOR PHONE CALLS

*Hello, my name is \_\_\_\_\_ (first name only). I'm a volunteer attorney. Did you obtain copies of the statutory will, power of attorney and/or health care directive? We assume that you have no existing estate planning documents. Did you review and understand our limited scope letter? Do you agree to its terms?*

[If yes to all questions, continue.]

[If they don't have copies of relevant documents (i.e. statutory will, etc), either send to them or ask that they obtain. Determine whether to reschedule or wait for them to get.]

[If they have existing estate planning documents, ask for Legal Access staff to reroute caller to an expert attorney. [COMMENT - Hopefully callers with existing documents will never get here. They should be immediately routed to an attorney by the initial intake person. For more details, see footnote below<sup>1</sup>.]

*Alright, I would be happy to try to help you. First, I just need to explain that this is a limited scope "clinic" – we offer confidential legal assistance only during the course of this call. Everything you tell me is confidential. Our goal is to help **you** create your own basic estate plan – a plan that for many will just be a stopgap measure. This plan does not address tax planning or probate avoidance. If you have a larger estate and/or have a complex family or property situation, this plan will likely not work well for you. Because of our limited scope, also keep in mind that I may not get all of the information needed to help you with your specific situation. Finally, know that I'm only your attorney during this phone call. Do you understand and agree to this?*

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<sup>1</sup> Because this is limited scope, we do not want to see a caller's documents. If asked to review, callers should be advised that because of this limited scope representation, we cannot review their documents - on the other hand they should understand that if we don't review documents there may be issues that we are overlooking. In any event, **it is important to advise them in this case to consult with an estate planning lawyer.**

**California Uniform Statutory Will**

- Advise that the Will (likely) does not address:
  - Non-probate assets, such as retirement accounts, life insurances, joint tenancy accounts and “pay on death” accounts - beneficiary designations will control those (unless no named beneficiary. For example, named beneficiary predeceased.);
- Questions to Ask:
  - *Are you married or a registered domestic partner?* [If married, spouse should do a plan too especially as to decisions relating to children. Reminder that they can control disposition of only one-half of the community property. Note they are not required under CA law to give their half to their spouse although typically most do.]
  - *Do you have children? Ages?*
  - *Do you own real property? How is it titled?* [If titled in joint tenancy or community property with right of survivorship, this Will does not control transfer at death if surviving joint tenant or spouse survives them.]
  - *How are your bank or other accounts titled?* [If joint account or pay on death account, this Will likely does not control transfer at death if surviving account holder survives them.]
  - *Do you have retirement or IRA accounts, or life insurance?* If yes, these accounts (and/or your life insurance) are controlled by a beneficiary form and not this Will unless there is no named beneficiary. [Advise them to review beneficiaries on retirement and IRA accounts, and life insurance to confirm that they match their wishes.]
  - *Any non-US assets? Any other unusual assets?* [SEND TO expert attorney.]
- **Guardianship** (only applicable if client has children under 18): Advise the client that this is just a nomination, not an appointment. Judge ultimately decides what is in your child’s “best interest.” Nominations given significant weight.
- **Custodian of Assets:** If the client has children under the age of 25, does the client want to avoid future court oversight? Additionally, does the client want to delay his/her child’s control of property left to him/her until 25? With CUTMA, the custodian is not subject to automatic review by the courts. If believe custodian is trustworthy, best to choose this option because it will save the cost of regularly going to court. [NOTE: important that client and spouse fill out this information the same.]
- **Bond Requirement:** Bond is normally required in a probate to protect the beneficiaries in the event the executor/administrator absconds with the property of the estate. Most people waive the bond requirement where they know and trust the executor he/she is naming, because it is then just a waste of money.

- **EXECUTION of Will:**
  - Above choices made by signing in box next to choice. Certain choices require inserting names or dollar amounts. (Specific gift of cash is ONLY for cash and not other property.)
  - The client must have two individuals act as witnesses. The witnesses must not be related to the client and must not be named in the will. Both witnesses and the client must all be in the room together. The witnesses must watch the client sign the will and understand that the client is signing a Will. The witnesses do not need to know the details of the Will.
  - Client must sign, date, and complete location where indicated (page 7).
  - Client must declare to the two witnesses that he/she has signed the will and that they wish them to sign as witnesses. [**“This is my Will; I ask the persons who sign below to be my witnesses.”**]
  - The witnesses should then sign their names, print their names, and fill in the date and location where indicated (page 7).

#### **Uniform Statutory Form Power of Attorney**

- Most clients initial line (N) (and only line (N)) on the first page unless the client wants to limit the agent's powers to specific powers, in which case the client should initial next to those specific powers. [Comment - make certain this is an initial, and not for an example an “x” by line N etc.]
- Do not alter anything on page 2 unless the client wants to change the default provisions that the power is effective immediately and continues to be effective upon incapacity. If caller has questions about this, consult with a PPG attorney.
- Insert name of first choice agent, and back up if desired.

- **EXECUTION OF POWER OF ATTORNEY**

- Insert the date and county on page 3 and sign name where indicated. This document will need a notary. The client can either sign the document in front of a notary or sign it without the notary and later acknowledge in the presence of a notary that the signature on the document is their signature.
- The notary should complete the notary page (last page). [We hope to provide information on getting a notary.]

#### **Advance Health Care Directive**

- Be judicious about offering opinions to clients - they're health care providers.
- Note option to make the health care directive immediately effective. (It is our bias to make the health care directive immediately effective in case for example the client is very ill but still has capacity).
- Do not fill out 1.8.

- **EXECUTION OF ADVANCE HEALTH CARE DIRECTIVE**
  - Page 5: The client signs at the bottom of page 5 and fills out information as noted. Two witnesses should witness client's signature (or a notary).
  - Page 6: The two witnesses sign where indicated in Part 5. At least one of the two witnesses also signs at 5.4.<sup>2</sup>
  - Page 8: Alternatively, the Health Care Directive can be notarized. If notarized, the notary should complete this notary page.
  - Sign and date the HIPAA Release Authority (the last page).
  - Provide their doctor and health care provider with a copy of the Health Care Directive and HIPAA Release. When warranted, advise that document is immediately effective.

**Reminders:** Remind clients to check titles on accounts and real property. Also clients should check beneficiary designations on retirement and IRA accounts, and life insurance

**Storing Documents:** Once signed, the client should keep the documents in their house in a safe place. It is important to inform others, especially named executor and agents where the documents reside. They should give a copy of Health Care Directive to their agent and their doctor and health care provider. \*\*\*\*Safekeeping the original will is of particular importance.\*\*\*

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<sup>2</sup> Page 6, Part 6: Additional witness signature is needed if document is signed in a skilled nursing facility - not likely here.

This is a sample intake. The intake student fills out pages 1 & 2, the volunteer attorney completes page 3 and returns to Legal Access



**WAFER Intake Form**

Intake Completed By: \_\_\_\_\_ Intake Date: \_\_\_\_\_

**Client Demographic Information**

Full Legal Name: \_\_\_\_\_

Email Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Alternate Phone Number: \_\_\_\_\_

Occupation: \_\_\_\_\_ Employer: \_\_\_\_\_

Age: \_\_\_\_\_ Gender: \_\_\_\_\_ Marital Status: \_\_\_\_\_

Est. Gross Monthly Income: \_\_\_\_\_ Household Size: \_\_\_\_\_ # of Children: \_\_\_\_\_

Ethnicity: \_\_\_\_\_ Has a Disability: \_\_\_\_\_

Interpreter needed in: \_\_\_\_\_ (lang) Veteran/Currently Serving: \_\_\_\_\_

**Limited Scope Warning** (read to client)

- The goal of this appointment is to help you create your own basic estate plan – a plan that for many will just be a stopgap measure. This plan will not address tax planning or probate avoidance. If you have a larger estate or have a complex family or property situation, this plan may not work well for you.
- The clinic attorneys provide advice and consultation only, meaning the attorney you meet with will not provide further services after the appointment has concluded.
- The consultation at the clinic does not establish an on-going attorney-client relationship between me and the attorney.
- Clinic attorneys are volunteers and will not charge you for their time at the consultation.

Client confirmed they understand and agree to the limited scope representation.

What days and times is the client generally available for by phone for an appointment?

(Client intake continued on pg. 2)



Does the client have access to a computer and printer to fill out the documents the attorney helps them prepare and will they be able to print out the documents when they are done?

**Has the client previously prepared any estate planning docs?** (check all that apply):

Power of Attorney, do they have a copy?

Will and/or Living Trust, do they have a copy?

Advance Healthcare Directive, do they have a copy?

Other Estate Planning Documents:

**Needs of the Client** (check all that apply):

Has the client watched the video and reviewed the materials online?

Wants to ask questions about the forms

Have someone walk them through completing the forms

Other:

**Does the Client:**

Own real estate or a house in another country

Have a child who is disabled and need someone else to handle their money throughout their life?

**What prompted the client to contact us and where did they hear about us?**

**Is there anything else we should know?** Including whether the client has an urgent need to complete these forms, especially note if the client mentions they are sick.



**WAFER Consultation Summary**

**Client Name:** \_\_\_\_\_

**Volunteer Name:** \_\_\_\_\_

**Volunteer Email Address:** \_\_\_\_\_

**Date of Appointment:** \_\_\_\_\_

**Length of Appointment:** \_\_\_\_\_

**Documents Reviewed with Client (check all that apply):**

Statutory Will

Statutory Power of Attorney

Advance Healthcare Directive

Unable to review any forms, reason:

**Client Needs Referral to Estate Planning Expert Because:**

**Other Comments:**

Please return to Legal Access at [willsassister@gmail.com](mailto:willsassister@gmail.com) when completed.