



COLEMAN & HOROWITT, LLP  
ATTORNEYS AT LAW

FRESNO | BAKERSFIELD | LOS ANGELES | NEWPORT BEACH | VISALIA | SONORA

# The Last Minute Estate Plan: For People Who Are Going Into “Surgery” Tomorrow

## **An Unexpected Phone Call**

A man called me today. He goes into surgery tomorrow: “I’ve drafted a power of attorney, I just need someone to review it and tell me that it looks good.” After a short conversation, I realize that he really wants to make sure that “his wife is taken care of” if he should die, but sadly, a Power of Attorney is not going to do the trick.

The Powers of Attorney (in all their forms) give someone else the ability to act “as if” they were you during your life. You can give other people the power to sign contracts, sell property, make medical decisions, and much more, but the key is that you must be alive in order for the Power of Attorney to have any meaning.

What this man really needed was an entire estate plan, including a Will, a Trust, Powers of Attorney, HIPAA releases, and more. This kind of package is not overly complicated, but it requires more attention than just a few hours. To do it correctly, we would want to have a lengthy discussion and then review after a week to ensure that, after having time to think, your wishes remain the same.

So, what might a person do if they are going into surgery tomorrow and they don’t have enough time to prepare?

## **A Last Minute Effort**

I asked the man for permission to call him back after the surgery. He will face similarly risky situations again, and if he survives tomorrow, he will want a full estate plan. But, what can he do today?

The quickest and easiest way to provide basic protection for you and your loved ones can be done today, and it will take no more than five minutes. You can take more time if you like, but it does not have to take long.

If you, like the man who called me today, have an emergency situation and are afraid that you have not prepared, then you can always make a “holographic will.” A holographic will is a basic estate planning document that requires:

- No witnesses
- No notarization
- No lawyers

You can draft one yourself.

## **Making a Holographic Will**

To make a holographic will, you must write a statement that dictates your wishes. It must be hand-written, so pull out a pen and a notepad. It must also be signed, so when you get to the end of it, add your signature. Adding a date helps others to verify *when* you wrote it, and it can say anything you like.

For example, if the man who called wished to leave everything to his wife, he could write “In the event of my death, I leave all my property to my wife, Jane Doe. Signed [John Doe] on October 18, 2021.”

This simple statement would serve as his official “Will” if something should happen, and a Probate Court could use it to ensure that his wishes are fulfilled.

## **Problems with Holographic Wills**

Holographic Wills are great, because they are easy. However, they have problems too.

One problem is that they are not drafted by lawyers. The Probate Court will help you execute your Will, but if a lawyer does not draft it, it is likely not well thought out and the Court will have to make guesses about how to handle certain hard-to-handle situations. Leaving room for the Court to make a guess about how property should be handled (sold, transferred as is, or otherwise) is room for disaster.

Also, when a lawyer does not draft a Will, it is possible that the Will will include language that the Court cannot enforce. In one case, a man said that he wanted to leave his entire estate to his son, but only if his son promised to marry a certain girl within a certain amount of time. The Court found that this condition was unenforceable. Not all conditions are unenforceable, but this condition interfered with the son's constitutional right to freely choose his spouse, so the condition was stricken.

If a lawyer drafts your Will, then the lawyer can use language that effects your intent while staying within the legal limits of the Court.

A second problem is that Wills must be Probated. One of the few things that people commonly think about death is that Probate is "expensive." Whether it is true or false depends on a lot of factors, regardless, most people wish to avoid probate, and a Holographic Will does not.

## **Fixing the Problems with a Holographic Will**

If you are headed into surgery tomorrow, a Holographic Will is your best option for putting your wishes into a form that the Courts can address. When you get out of surgery, you should immediately look to fixing the problems addressed by the Holographic Will.

To fix those problems, contact an estate planning attorney. The Estate Planning attorney will draft a new Will. He or she will also put your wishes into a Trust so that your family can avoid probate altogether. Finally, your attorney will ask you questions about how you wish to handle various situations while you are still alive (like whether or not to pull the plug, whether or not you wish to live in a nursing home, and other particulars). The attorney will help you select people to execute your living wishes and help you grant them Powers of Attorney limited to those purposes.

The full estate plan goes well beyond determining who gets your stuff. It creates a roadmap, simplifies difficult decisions for your family, and gives them the legal tools to help you while avoiding a probate court.

Contact [Coleman & Horowitz](#) to have an estate plan drafted for you.

The Estate Planning, Probate, and Tax Group advises individuals and employers of all sizes on laws that impact their interest and represents them in any disputes that arise. If you have any questions regarding this article, contact [Jared Clemence](#), at (559) 248-4820 or [jclemence@ch-law.com](mailto:jclemence@ch-law.com).

© Coleman & Horowitz, LLP, 2022

### **About the Firm:**

Established in 1994, Coleman & Horowitz is a state-wide law firm focused on delivering responsive and value driven service and preventive law. The firm represents businesses and their owners in matters involving transactions, litigation, agriculture and environmental regulation and litigation, intellectual property, real estate, estate planning and probate.

The Firm has been recognized as a “Top Law Firm” (Martindale Hubbell) and a “Go-To” Law Firm (Corporate Counsel). From six offices in California, and the Firm’s membership in Primerus, a national and international society of highly rated law firms ([www.primerus.com](http://www.primerus.com)), the Firm has helped individuals and businesses solve their most difficult legal problems. For more information, see [www.ch-law.com](http://www.ch-law.com) and [www.Primerus.com](http://www.Primerus.com).

*Disclaimer: This article is intended to provide the reader with general information regarding current legal issues. It is not to be construed as specific legal advice or as a substitute for the need to seek competent legal advice on specific legal matters. This publication is not meant to serve as a solicitation of business. To the extent that this may be considered as advertising, then it is expressly identified as such.*