

## WILLS AND ESTATE PLANNING

### Why Do You Need A Will?

A will disposes of your property after your death. If you die without a will, state statutes of descent and distribution, called "intestacy" statutes, establish the order in which your relatives inherit your possessions. These intestacy statutes differ from state to state, but the general order is:

1. Spouse and natural or adopted children and their descendants;
2. parents; and brothers and sisters and their descendants.

So, if you die without a will, the state decides which of your relatives gets your property. If you have a will, you make that determination.

It is important to remember that not all property passes by will. Insurance passes directly to the named beneficiary. Property titled jointly with a right of survivorship automatically passes to the surviving owner. If possible, it is generally in your heir's best interest to pass property outside your will. This makes the probate process simpler, faster and less expensive. Consult Legal Assistance for further information on this subject.

A will also serves two purposes beyond disposition of property. First, and most importantly, it allows you to name a guardian for the person and property of minor children who may survive you. A will also gives you an opportunity to express special burial preferences and name a personal representative/executor. A personal representative/executor is the individual who will settle all of your outstanding debts and coordinate your funeral arrangements. Spouses typically name one another as their personal representative/executor for efficiency and convenience purposes. However, also consider naming an individual other than your spouse in order to allow your spouse a sufficient period of time to grieve your passing.

### Legal Assistance

Legal Assistance will prepare a will for any service members and their dependents. If you do not have a will, inquire of the Legal Assistance Office to determine if you are a likely candidate to need a will. If you are, then you will be provided with a will application packet to complete. If you are a married couple and you both desire wills, you must also read and sign this conflict consent sheet and return it to the office along with the will questionnaire. You will also have the opportunity to consult with an attorney prior to executing your will. If you already have a will, a Legal Assistance attorney will review it, and revise it as needed.

A will drafted by Legal Assistance is a professional legal document designed to be valid in the state that the decedent claims as his or her legal residence.

### The Law of Wills

Generally the law of wills is a highly complex legal area. It cannot be fully explained in a publication of this nature.

A few basic terms and concepts are explained below.

### Probate

"Probate" is the process by which a court supervises the accounting of a decedent's estate, the payment of debts held by the decedent, and the distribution of the remaining estate. All wills must be probated. If the court finds the will valid, the court will follow the decedent's directions in the will, including the property distributions. If there is no will, the probate process is still required to distribute property by the laws of intestate (without a will) succession.

### Executor/Executrix

The executor of a will is the decedent's personal representative. With court approval, the executor gathers and distributes the estate's assets and pays the estate's debts. A highly responsible person most familiar with your affairs, generally makes the best executor. Therefore, spouses generally appoint one another as executors. Always appoint an alternate executor in your will.

### Bequests

A bequest is simply a gift made under a will. You may make "specific" bequests of your property. For instance, your will may state "to my brother, John, I give my coin collection." You may also make "general" bequests of stated amounts of money. Finally, you may give the rest or "residue" of your estate to a person or persons in whatever share or percentage you desire. This is known as a "residuary" clause or bequest. You may attach conditions to any bequest so long as those conditions are not illegal and do not violate public policy.

### Revocation

A will remains effective until it is revoked. The best method of revocation is a new will which expressly revokes all previous wills. You can also revoke your will by destroying it with an intention to revoke. Do not attempt to alter your will with a pen change and do not remove the staples that bind the pages of the will in order to make a copy of it because this will also invalidate it.

Review your will annually. If you think it needs revision, contact Legal Assistance. If you marry, re-marry, divorce, have children or want to disinherit an immediate relative, you should obtain a new will.

### The Importance of Safekeeping

As soon as it is executed, the original will should be placed in a safe place where it will be readily available at the time of death, and where it will not be accidentally lost or destroyed. A metal fireproof box can be used for this purpose. This is also a good place

to keep valuable papers such as deeds, automobile titles, insurance policies, leases and written contracts. Do not keep your will in a safe deposit box because it is sometimes difficult to obtain the necessary authorization in order access those boxes after the death of the primary account holder. Lastly, ensure that you indicate on the Emergency Data Sheet that you complete for your S-1 where your will is located and that your personal representative/executor has access to it.