

What Military Families Should Know About Wills



Prepared by:
Aeronautical Systems Center
Office of the Staff Judge Advocate
5135 Pearson Rd
Wright-Patterson AFB, OH
Phone: (937) 257-6142
DSN 787-6142

Revised Feb 2007

A will is a written declaration of how you want your property to be distributed after your death. By means of a will, you can appoint a person or institution (executor) to manage your estate and carry out the desires expressed in the will (i.e. make sure all expenses are paid and your property is distributed as you wish). In addition, you can name a person (guardian) to take care of your minor children and their property upon the death of both parents. With very few exceptions, any attempt to direct the disposition of your property after your death must meet the formal requirements of a will to be legally binding. If you should die without a will, the state will distribute your property in accordance with state laws. A court will also appoint a person to manage your estate and a guardian for your children.

Why you may **need** a will: In most states, if a person dies without a will, leaving a spouse with no children, the entire estate goes to the spouse. If one dies leaving a spouse and children, then a certain percentage of property goes to your spouse and the remainder goes to the children. If one dies leaving neither a spouse nor a child, then your entire estate will go to your parents.

You may ask then, why a will if that is my desire? A few examples are provided for you to consider. Without a will, if the children are minors, a guardian could be appointed to look after their property. Probably, the court would appoint your spouse who would have to pay for a bond. The spouse might not be permitted to use any part of the children's share of the property, even for their own support and education, unless permission is obtained from the court. An accounting would have to be filed with the court periodically, showing what was done with the children's share of the property and the spouse might be required to appear in court to explain it. This causes inconvenience, and is expensive as well.

Will worksheets are available at the Legal Office. Each person who wants a will must complete a worksheet prior to consulting with an attorney. Once you have completed the worksheet, you may meet with an attorney during legal assistance hours. If you and your spouse are preparing wills, you must both meet with an attorney. At your election, you may meet with the same or different attorneys.

Our attorneys do not prepare lengthy or complex wills.

This has been prepared to assist you in making the basic decisions about what your will should contain. **Reading this is not a substitute for consulting with an attorney.**

INSTRUCTIONS AND EXPLANATION FOR COMPLETING WORKSHEET

Personal Information

Fill in all the information on the will worksheet as completely as possible. Use full legal names (not nicknames).

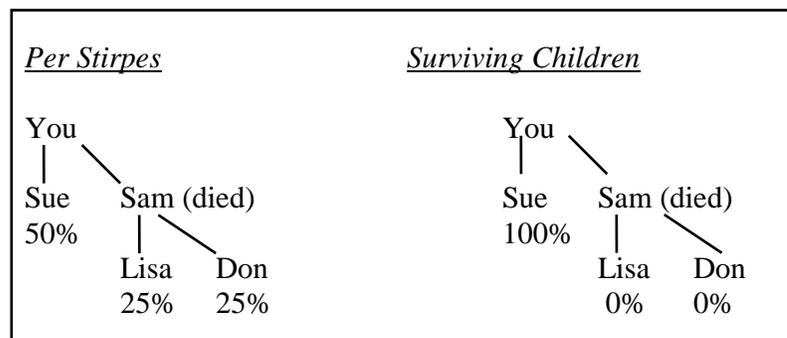
Asset Information

To properly distribute your property by a will, it is important that you be aware of all your assets and their values as any assets not included in the will are distributed per state law as described in the example of why you need a will above. More importantly, adverse tax consequences can occur if your estate is greater than \$1,000,000 in value. For federal estate tax purposes, this amount includes *everything you own*, including real estate and life insurance. The Legal Office recommends that if your estate is over \$1,000,000 you should see a civilian attorney who is an estate-planning specialist. *A small investment in time and money spent now will be well worth the tax savings later.*

Disposition of Property

The most important provisions of your will are those directing to whom your property will go. The persons who take under your will are called beneficiaries. This worksheet provides for alternate beneficiaries in the event that your primary beneficiary should predecease you. When providing the names of your beneficiaries use their full legal name(s) (not nicknames).

If you choose to divide your property among a group of people (e.g., your children), there are varying ways to provide for the distribution. The first way is to have your property divided equally among those members of the group who survive you. That is, if one member predeceases you, his/her share will be divided among the remaining members of the group. Another method of distribution allows for your property to pass to the deceased member's descendants. This method is known as *per stirpes*. Leaving your property to your children *per stirpes* is the most popular way because if one of your children should predecease you, your grandchildren will be provided for in your child's stead. The following example is designed to explain the difference through a comparison:



In the above example, you divide your property equally between your two children, Sue and Sam. During your lifetime Sam has two children, Lisa and Don. Sam then dies before your do.

Under *per stirpes*, Sue would still receive her $\frac{1}{2}$ interest in your estate (the same amount she would have received had Sam lived), and Lisa and Don would split Sam's $\frac{1}{2}$ interest (that he would have received if she lived), giving each a $\frac{1}{4}$ interest. The other method, ending at your surviving children leaves your grandchildren, Lisa and Don, with nothing.

There is no *requirement*, however, that you divide your property evenly among your descendants. You can divide your property any way you wish.

If any of your intended beneficiaries have a mental or physical disability any assets they receive from you through your will might impact their ability to receive state and federal assistance. You need to discuss these potential issues with your attorney.

Guardians

If you currently have minor children, you should provide for a guardian and alternate guardian in your will. An alternate guardian may be needed in the event that your initial guardian predeceases you or elects not to be the guardian. All parties involved are better off if you discuss a potential guardianship with the guardian(s) before naming them in your will. The guardianship provision will normally take effect only if the child's other natural/adoptive parent predeceases you. Your designation of a guardian is not legally binding on the courts, but they will appoint that person if they feel the person is qualified and it is in the best interest of the child to do so.

There are two types of guardians: guardian of the person and guardian of the property. The same person usually serves as both, but this is not mandatory. The guardian of the person is charged with the legal responsibility of raising your children in the event of the death of both you and your spouse. The guardian of the property plays a role similar to that of a Trustee as discussed below. If you have an adult child with a disability your attorney can assist you in providing for a guardian for him or her as well.

Trusts

A trust is a mechanism by which you give legal title to property to a trustee to manage for the benefit of a beneficiary. A trustee can be a relative, friend, banking institution, or any other qualified persons. Commonly, trusts are set up to ensure that minor children will have money available for their education and to protect the assets from being used unwisely. At the Legal Office, we will only create simple trusts for the benefit of children. The trust will not limit the powers of the trustee, will require the termination of the trust to be based upon a specified age, and will be created for the entire estate.

A trust can be an expensive undertaking, and should not usually be considered unless the estate has substantial assets or there are blended family concerns. Life insurance policies should be considered assets when determining whether a trust is needed. Note, however, you will need to coordinate with your insurance company to ensure that the proceeds will go to the trust and not directly to the minor children.

The trust will terminate at the age specified in the will, and the trust must convey the trust property to the beneficiary(ies). It can be terminated, that is, the property can be conveyed, to each child when they reach the specified age, or to all when the youngest child reaches the specified age.

If you create a trust, you must make sure you provide for a way to fund the trust. The most common way to do this is through insurance proceeds. Your attorney can provide you further details on this matter.

Executor(Executrix)/Personal Representative

An executor (executrix if a woman) or a personal representative is the person who sees to it that the wishes expressed in your will are properly carried out. Some of the responsibilities of an executor are: gather and perform an inventory of your assets; pay your debts, funeral expenses and taxes; sell property if necessary for distribution; and distribute the remainder of your assets according to the terms of your will.

The surviving spouse may, but does not have to, be listed as the executor/executrix. Any relative, friend or professional whom you trust may serve in this capacity. The executor/executrix must be over the age of 18. It is wise to appoint an alternate in case your first choice is unwilling or unable to act as an executor/executrix.

In addition, some states require that the executor post a bond. Bonding is a way of assuring that your executor performs the duties required by law. Since posting a bond can be a financial burden on the estate, our standard wills exempt the executor from this requirement. If you would like a bond to be posted, please inform the attorney at the interview. Most states also give the executor the Power of Sale. This gives the executor the authority to sell property and distribute the proceeds as he/she deems fit in order to comply with the terms of the will. If you wish to eliminate this power, inform the attorney preparing your will.

SGLI and Other Life Insurance Policies, Bank Accounts, and Stocks

A will has **no** effect on your life insurance policy or any other investment that has a named beneficiary. SGLI and other insurance policies are contracts between you, the insured, and the insurance/investment company, the insurer. The insurer or investment company will distribute the proceeds of the policy to the beneficiaries identified in the insurance policy or contract. The company **will not** follow your instructions in the your will unless you tell them to do so. Therefore, it is extremely important that you notify the insurer, bank, or investment company that you want to change the beneficiaries.

Also if you have a safety deposit box make sure that in the event of death or incompetency that the bank will allow your executor access to the safety deposit box. The will may or may not be able to allow the executor access. Ask your financial institution for further details.

If you decide, after discussing it with your attorney, to establish a trust or a custodianship under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act (UGMA/UTMA) for your child, you must change your insurance policies in order to fund the trust. Discuss with your attorney what language you should use to update your policy. Once your will is completed,

you will need to go to Personnel at Military Personnel Flight and ask for a new beneficiary delegation form to update your SGLI.

For all other insurance policies, you must contact the insurer for a formal change of beneficiary form. Again, you should discuss your desires with your attorney and your insurance company to make certain your desires are followed.

Optional Ancillary Documents

Living Will

A living will is not part of your will at all. But this is a good time to consider whether you want a living will, which is more accurately called an advance medical directive or declaration. This document becomes operative in the event your physician determines that you have a terminal, incurable medical condition, and your life is only prolonged by means of artificially provided life support. Through your living will you can communicate a desire not to have your life prolonged through the use of artificial life support.

You can also communicate any wishes to make or decline any anatomical gifts (AKA organ donation). You have the ability to authorize the use of your whole body or just specific organs and tissues. You can also choose how your donation(s) may be used (i.e. transplantation, medical research, medical education). However, the rules do vary from state to state, so you should discuss your desires with your attorney to make certain your desires are followed and comply with applicable state law.

Once executed, the document is effective until it is revoked, which only you may do at any time by physically destroying the document or, in an emergency, by verbally revoking it before witnesses who can testify that you did, in fact, revoke it.

Durable Power Of Attorney for Health Care

A scenario often not accounted for is if you become unable to make your own medical decisions, but are not deemed to be terminally ill. Who makes medical decisions for you? That question is answered by another important health care document, the durable power of attorney for medical care. You may execute this document in addition to the living will. This document appoints someone to make medical care decisions for you in the event that you cannot make your own medical decisions. The living will only addresses the issue of continued life support when you have a terminal condition. Unlike the living will, the power of attorney for medical care gives the person you designate as your agent the authority to make a wide range of medical decisions on your behalf. It also gives your agent access to your medical information and authority to fully participate with your treating physicians in deciding the care to be provided to you.

You can designate anyone who is 18 years of age or older to be your agent except your physician or the administrator of your health care facility. However, the person you designate to be your agent should be someone you trust with life and death decisions. It is also important to

remember that decisions about your health vest with your doctor, family members, or possibly a court if you are without a durable power of attorney for health care or a living will.

Springing Durable General Power Of Attorney

Your will enables you to dispose of your property as you wish after your death. While you are living, you have the right to decide what happens to that property so long as you are of sound mind. But if you ever become incapacitated, whether through illness or accident and are unable to handle your own affairs, a court order may revoke your right to manage your own money and appoint a guardian or conservator. To protect yourself from this eventuality, you can appoint an agent for yourself through a power of attorney.

A power of attorney is simply a written authorization for someone to act on your behalf, for whatever purpose you designate in writing. Ordinarily, a power of attorney expires if you become mentally disabled – the time when you need help the most. A springing durable power of attorney can take effect when you become unable to manage your own personal and financial affairs and will last as long as you are alive or until you revoke it. As long as you are mentally competent, you can revoke a durable power of attorney whenever you like simply by destroying the document.

If you choose to have a springing durable general power of attorney, remember to name someone who you trust as your attorney-in-fact. Your attorney-in-fact will have great authority over your affairs. Not only can he/she keep your affairs in order, but he/she has the potential to abuse this document at your expense and his/her gain.

Other Important Information

Applicable State Law: A will drafted at the Legal Office will meet the requirements of all 50 states.

Will's Effect on Property held in Joint Tenancy: Property titled in the form of joint tenancy with "right to survivorship" (frequently homes, cars, bank accounts) passes automatically to the surviving owner(s). "Joint tenancy with right of survivorship" in Ohio is a form of co-ownership of property whereby two or more persons own property together. On the death of one joint owner, proceedings may still be required to transfer title of certain assets and to determine taxes. Joint tenancy can be a useful device in certain situations.

Final Pay and Allowances: Federal law provides that final pay and allowances, and other moneys that may be owed on account of military service, will be paid to the beneficiaries on DD Form 93 (available at the MPF). It is important that this record accurately reflects your desires.

Changing your Will: As a general rule, a will has to be signed and witnessed before it is legally effective. Sometimes an event will occur that prompts you to change your will. You may use a codicil to make simple changes, such as naming a different executor. A codicil is a legal document that is added to your will. It must be prepared with the same formalities as your will,

so do not cross out words, or write on your original will as this may invalidate it. If substantial changes need to be made, a new will can be written that will revoke the previous will.

One should consider changing or at a minimum reviewing a current will if (1) you get married, divorced, or separated; (2) there is a birth or death in your family affecting a beneficiary, guardian, or executor(rix); (3) you have a large increase or decrease in the assets or asset values of your estate; or (4) you decide to change how you want your assets distributed.

The information contained in this pamphlet is intended to provide you with a general overview of the law. It is not intended to be comprehensive, and should not be considered legal advice. If you have questions you should contact an attorney.

A military legal assistance attorney can provide guidance on these matters free of charge to all active duty personnel and their dependents along with reservists and guardsmen on federal active duty and their dependents. In addition, retired personnel, their dependents, and dependent survivors may also receive legal assistance to the extent personnel and facilities are available.

To schedule an appointment to discuss these or other legal matters you can contact the Wright-Patterson Air Force Base Legal Office at (937) 257-6142, DSN 787-6142.
