



WILLS

FAQ

Prepared by: 17 TRW/JA

Current as of October 2024

The information displayed in this handout is meant for the sole use of Active duty service members, retirees, their families and other personnel eligible for legal assistance from the Goodfellow AFB Legal Office. The information is general in nature and presented to assist those eligible persons prepare for a legal assistance appointment with a professional in the legal office. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

Should I get a will?

Over your lifetime, you can accumulate a variety of assets, including property, land, company shares, businesses, cash, bank accounts, artwork, jewelry, cars, and more. But what happens to these assets after you die? Essentially, it's up to you to decide. This is where a will becomes crucial. A will ensures that your assets go to the people you choose and helps ease the burden on your surviving relatives and loved ones. It also prevents your assets from being distributed in a way that you might not have intended.

What is a Last Will and Testament?

A will is a legal document used to dispose of your property at your death. It may also name people to perform important roles, such as an executor of your estate, a trustee if you have established a trust, and guardians for minor children. A will is only effective upon death and has no effect while you are alive.

Who Can Get a Will?

Anyone who is over the age of 18, lawfully married, or a member of the armed forces, and of sound mind can make a last will and testament. The person should be free of coercion and should be making the will of their own accord.

What If I Die Without a Will?

If you die without a will, the courts will distribute your assets according to state law, a scenario known as "dying intestate." While this process ensures that your assets are distributed to your next of kin, it may not align with your personal wishes. Typically, the law prioritizes spouses, children, parents, and siblings in that order. Dying intestate can also lead to delays and additional costs, but it doesn't necessarily mean your assets will be unfairly distributed.

What is My Legal Residence?

Your legal residence is the state where you have your true, fixed, and permanent home. It affects where your will is probated and the amount of state inheritance or estate tax that may be paid at death.

To Whom Should I Leave My Estate?

A person who receives property through a will is a "Beneficiary." You can leave your property to one beneficiary or divide it among several. You should decide on at least two levels of beneficiaries: "Primary beneficiaries" (those who will inherit upon your death) and "Secondary beneficiaries" (those who will inherit if the primary beneficiaries die before you). If you have no living relatives, you might consider naming a charity as the beneficiary.

May a Person Dispose of Their Property in Any Way?

Almost, but not quite. In most states, a married person cannot completely disinherit a spouse. Generally, you are free to give your property to whomever you desire, but some states have laws that entitle spouses and sometimes children to a portion of the estate.

Does a Will Dispose of All My Property?

No. Certain types of assets pass automatically at death according to statute or beneficiary designations, such as life insurance, retirement plans, jointly-owned property, living trusts, and "Transfer on Death" or "Pay on Death" accounts.

Can I Leave Property to Minor Children in My Will?

Yes, but an adult must manage it until the child becomes an adult. Your will can name someone to manage the property, thus avoiding the need for a court-appointed guardianship.

Should I Name a Guardian for My Children in My Will?

Yes, it is advisable. Usually, the surviving spouse is designated as the guardian of any minor children. If you are divorced, it is especially important to name a guardian in your will. While the other biological parent is typically given preference, naming a guardian can provide guidance to the court in case the other parent is unable or unwilling to assume guardianship. You should also name a substitute guardian in case your spouse or the designated guardian dies before you or at the same time as you.

Who Should I Name as My Executor or Personal Representative?

An executor is responsible for settling your estate. Choose someone responsible and ask if they are willing to serve. You should also consider naming a substitute executor.

How Long is a Will Valid?

A properly drawn and executed will remains valid until it is changed or revoked. Changes in circumstances, such as tax laws, marriage/divorce, birth of children, or substantial changes in your estate, may necessitate updating your will.

Can I Change My Will?

Yes. You can change your will by executing a new one or using a codicil for simple changes. Never cross out words or write on your original will, as this may invalidate it.

When Should I Review or Change My Will?

You should consider changing your will when:

- You get married or divorced.
- There is a birth or death in your family.
- You have a large increase or decrease in the value of your property.
- The person you named as executor, guardian, or trustee dies or becomes unavailable.
- Estate tax laws change.
- You change your state of legal residence.
- You decide to change how you want your property distributed.

What Happens to My Will if I Get Divorced or Married?

In some states, if you get divorced, the spouse named in the will is automatically eliminated as a beneficiary. If you marry after writing a will, your spouse receives a share unless the will makes clear that the omission was intentional.

Requirements for Proper Execution of a Will

For a will to be legitimate, it must be properly signed and witnessed. The testator must be at least 18 years old, of sound mind, and not unduly influenced. The will must be signed in the presence of two or more credible witnesses.

How Do I Revoke a Will?

You can revoke your will by destroying the original document or by executing a new will or codicil. Be sure to destroy all copies of any prior wills.

How Should I Safeguard My Will?

Store your will in a safe place, such as a locked fireproof box or a zip-lock freezer bag in your freezer. Inform your executor where the original is kept.

*Note: The court will only accept the original will, not copies. Therefore, it's crucial to keep the original document safe and secure. We do not advise making multiple copies, as this can create confusion and complications during probate.

Can I Write My Own Will?

While you can write your own will, it is advisable to have it drafted by an attorney to ensure it conforms to state laws.

When Should Things Be Probated?

Probate is required when a person dies and leaves assets that need to be legally transferred to beneficiaries. Refer to our “Probate” handout for detailed information on the probate process.

Disclaimer: The Legal Office specializes in drafting straightforward wills that typically involve simple asset distributions, such as leaving all property to a spouse or children. For more intricate estate planning needs, including the creation of trusts or detailed property divisions, we recommend seeking assistance from a private attorney. We do not draft these complex wills and you will not be seen for such matters. Our attorneys do not create trusts or offer advice on trust-related issues. For personalized guidance tailored to your unique circumstances and state laws, please consult with a qualified legal professional.

NOTE: This guide is intended for general informational purposes only and does not constitute legal advice. It is advisable to periodically verify this information and consult with a legal professional for the most current and applicable advice. If you have any questions or need to schedule an appointment with a legal assistance attorney, please call the Legal Office at 325-654-3203