



7th Army Training Command Legal Assistance Information

Wills and Estate Planning

Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

1. What is a Last Will and Testament?

A Last Will and Testament is a legal document that controls the disposition of your property at death. You may also use your Will to name a guardian to care for your children after your death. A properly drafted Will can save your grieving family unnecessary time, effort, expense, and unpleasant surprises.

2. Do I need a Will?

If you die without a Will, your property will be distributed according to a formula fixed by the law of your state of legal residence, or domicile. This usually means your property will go to your spouse or children; if you have neither spouse nor children, your property will go to your parents or siblings. If you are comfortable with your state's laws and do not have substantial assets or minor children, you may decide you do not need a Will. However, if you wish to dispose of your property in specific ways, or if you have minor children, you should have a Will. Consult a Legal Assistance attorney before deciding not to make a Will.

3. What Happens if I Do Not Have a Will When I Die?

Many people die without a Will, and the family of the deceased can still manage. It is simply NOT true that failure to make a Will automatically results in the State taking your property instead of it going to your heirs. However, it does mean that the State laws which establish the rules of inheritance will decide who gets your property.

4. What should be in a Will?

Your Will should name an "executor" or "personal representative." This is the person who will settle your estate. You should also name an alternate executor in case the

primary is unable or unwilling to serve. Your executor will have an important role in carrying out your wishes; choose him or her carefully, and discuss the matter with whomever you choose. You should also be aware that many states require an executor to either be a legal resident of your state of legal residence or to appoint a representative who is.

Your Will also designates who receives your property. For the most part, you may dispose of your property in any way you wish, but you should always name an alternate person or persons to receive property in case the first dies before you do. Note that you won't be able to leave anything to your beneficiaries unless your assets exceed your liabilities. All your debts have to be paid before anything is distributed to your beneficiaries.

If you have minor children, your Will should also designate their guardian and a method of managing their property. If you do not name a guardian, the court might designate someone whom you would not have chosen. Choose a guardian carefully, considering such factors as age, religion, social status, financial resources, and prior relationship between the proposed guardian and the children, and discuss the matter with the person you choose. While courts routinely look first to a child's surviving natural parent when naming a guardian, you should still designate a guardian and an alternate guardian in case the surviving natural parent is unable to care for the children. The guardianship designation should be the same in both parents' Wills. If it is not, and both parents die at or about the same time, the court will have to decide who should be your children's guardian, causing unnecessary hardship and expense.

Because courts will not normally give property directly to a minor child, a responsible adult should be designated to hold property on behalf of your child and to manage it until the child reaches the age of majority. This person may, but does not have to be, your child's guardian. If you have minor children, you should consult a legal assistance attorney to determine the best method for managing your children's property.

5. Why can't I do in my Will?

Most states will not allow you to disinherit a surviving spouse. Additionally, you generally may not leave property directly to an animal (it may be possible to set up a trust for an animal's benefit, but this is not a service the Legal Assistance Office can generally provide). Jointly owned property, such as a bank account, car, or real estate, held in both your name and that of another person, may pass to the surviving joint owner. The proceeds from contracts that name beneficiaries, such as life insurance, IRAs, and mutual funds, are paid directly to the designated beneficiary. Because you cannot change these beneficiaries in your Will, you must ensure that the listed beneficiaries reflect your current wishes. Finally, if you live in a community property state, your spouse may own half of all assets and income accrued during the marriage, and you may not dispose of your spouse's property in your Will.

6. How long is a Will good for?

A valid Will generally remains valid until you change or revoke it, however you may change or revoke your Will whenever you like. Changes to a Will are usually made by drafting a new one and destroying the old. While it is possible to change part of a Will by writing a “codicil,” which changes just the specified parts of the original Will, most Legal Assistance offices will draft a complete, new Will, rather than one or more codicils. Never make any changes to your Will without consulting an attorney. There are many technical requirements that must be met in order to make such a change legally valid. Any writing on the face of your Will may destroy its legal validity.

7. What else should I know about my Will?

Your Will is a judicially recognized way of passing on information and instructions after your death. There are other less formal but more flexible ways of passing on information. One of the best ways is to write an informal letter to your executor to give him or her additional instructions on specific issues. For example, an informal letter can be very useful for giving small gifts of primarily sentimental value to friends or relatives, but don’t use one to pass valuable property or real estate, because an informal letter is not legally binding. If you have any special requests concerning your funeral, burial, or other final instructions, you can put those in the letter too. The letter should list the names, addresses, and phone numbers of any relatives, friends, beneficiaries, executors, and guardians named in the Will, and any financial assets, real estate, or insurance policies you own, so that your executor can locate your property and beneficiaries after your death. Keep the letter with your Will, but don’t staple or attach it to the Will. Attaching an unexecuted letter to your Will may destroy the Will’s legal validity.

8. What should I bring with me when making my Will?

Because every state has different laws concerning Wills, you should know your state of legal residence. It may be, but is not necessarily, your home of record. Many people change their states of legal residence when they marry, buy a home, register to vote, or create other specific ties with another state. If you are not sure, your attorney will help you determine your state of legal residence.

If you already have a Will, bring it with you to assist the attorney in understanding your current arrangements and the changes you desire. You should know the persons whom you wish to inherit your property, as well as the alternates. Be prepared to provide full names of primary and alternate individuals to act as your executor, guardian of your children, and manager of your children’s property.