

Understanding Wills

*Introduction: As a service to our legal assistance clients, we have prepared this handout with frequently asked questions regarding your will. It is, of course, very general in nature since no handout can answer all your specific questions. Read over these questions and answers carefully in connection with your visit to our legal assistance attorneys so that you may have the fullest information available to help you with your legal issues. **Complete the will worksheet prior to seeing the legal assistance attorney who prepares your will.***

What is a will?

A Last Will and Testament is a legal document in which you state how you want your property to be distributed when you die. It also provides guardianship for your minor children. While you are alive, a will has no effect and no property rights are transferred by it.

Why do I need a will?

If you die without a will, your property will be distributed according to state intestacy laws of your legal residence and/or of the state where you die. Normally your property will go to your spouse and/or children, your parents, your siblings, etc. While state intestacy laws may be adequate in some cases, a will allows you to ensure your property will be given to the person(s) you wish. Furthermore, the will allows you to name a guardian for your minor children rather than letting the state decide who your children will live with. Finally, it is generally more expensive to distribute your property under intestacy laws (that money comes out of your estate) than it is to probate a will.

What is my “estate”?

An estate consists of the property you own or are legally entitled to possess at the time of your death. Your estate is made up of tangible and intangible items. Tangible items are those you can touch, such as clothing, furniture, household goods, cars, boats, houses and land. Intangible items are those such as bank accounts, stocks, bonds, insurance policies and cash.

What is probate?

Probate is the court procedure through which your will is proved to be valid or invalid. Probate proceedings also include the administration of your estate, payment of taxes, the guardianship of your children, etc. **Will all of my personal property be distributed under my will?**

Not necessarily.

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- Proceeds from insurance policies are not controlled by your will. This money will go directly to the beneficiaries you name in your insurance policy. SGLI is the best example of this for Servicemembers. However, you can designate that the insurance proceeds go into a trust created by your will. This may be more beneficial for tax reasons.
- You may also set up your bank accounts as “payable on death” accounts. This is done through your bank and it means that upon your death the money would go directly to your designated beneficiary. It may also be possible to set up your IRA and mutual fund accounts this way; check with your financial institutions.
- If you own property jointly with another person, that property will likely pass directly to the joint owner upon your death.

Can I leave my property to anyone I wish?

Generally, yes. Some states have laws that prohibit a person from completely excluding a (current) spouse. These laws usually give the excluded spouse 1/3 to 1/2 of the deceased spouse's estate.

When should I make a new will? How do I change an existing will?

You should revise your will when you have a change in marital status and when you have a child (either by birth or adoption). You may wish to periodically review your will to ensure it still represents your wishes.

Changes to wills are made by making a new will and destroying the old one, or by adding a codicil. Never make notations, additions, or deletions on your original will; they may make your will invalid and your estate will be settled by the intestate laws. Always see a legal assistance attorney when you want to make changes to your will.

Where should I keep my will?

You should not keep your will at your home. If you do, the same disaster that kills you may destroy your will. A safe deposit box is an option, but only if your personal representative has access to it. Otherwise, he or she will have to get a court order to open the box to see if you have a will in it. Many servicemembers entrust their will to their parents or another family member who does not live with them. Another option is the probate court of your home county. Be sure to tell your primary and alternate personal representatives where you are storing your will.

What if my will is lost?

If your will is lost, you should have another will prepared and executed. Only an original will can be admitted to a probate court. Therefore, it is very important to safeguard your original will.

What is a personal representative (executor) and how do I select one?

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A personal representative, or executor, is the person you name in your will to administer your estate. The duties of the personal representative include: collecting and inventorying your assets; submitting the inventory to the court; paying your last debts, expenses and taxes; and distributing the estate to your beneficiaries.

It is very important to choose a personal representative in whom you have trust and confidence. You want to select someone who is responsible, pays attention to detail, and will not be so distraught by your death that he or she cannot accomplish this task. Be sure to discuss your decision with the person you choose and ensure that he or she is willing to serve as your personal representative.

What is a beneficiary?

A beneficiary is a person, group of people, or institution (e.g., The World Wildlife Fund, The American Cancer Society, The University of Texas) to whom you leave your property in your will. You may leave all of your property to one person, a group of people, or entity or divide it as you see fit. You should name at least primary and secondary beneficiaries in your will in case your first choice dies before you.

What else can I do to protect my beneficiaries?

You should keep an organized file of your important records or a checklist of where these records can be found. This should include bank account numbers and locations; insurance policies and numbers; bonds, stocks, deeds, titles, survivor benefits, and pensions; and debts you owe or that are owed to you. Other important records are birth, death, marriage and divorce certificates and military retirement and discharge orders.

What is a guardian and should I name one for my minor children?

You should name a guardian for your children in your will to ensure that they and their property will be cared for if you die. A legal guardian is the person who will act as the parent for any of your children who are minors at the time of your death. If you are married when you die, your spouse will automatically be the guardian if he or she is the biological or adoptive parent of the children. However, you should appoint a guardian in case your spouse dies before or with you. The person you appoint as guardian for your children does not have to be the same person you appoint to manage the property you leave to your children.

What is a trust and do I have to put one in my will?

A trust is an instrument created by your will to manage money on behalf of named beneficiaries. A trust is usually used when assets are left to minor children. In your will, you appoint a trustee who will manage the assets. You can direct the trustee to make payments for education and medical expenses and you can designate the age at which the remaining assets of the trust will be given to the beneficiary and the trust will be terminated. Carefully consider the age you designate for the final distribution of the trust assets. While an 18 or 21 year old may be

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considered a legal adult, he or she may not possess the maturity to make wise decisions regarding a large amount of money.

You can also give your assets to minor children under the Uniform Gifts to Minors Act (UGMA). This is similar to a trust in that an adult will manage the assets on behalf of the minor children. First, the executor you appoint will manage the assets. Once the estate is closed, the guardian you appoint (or the children's other parent) will manage the assets. Finally, under the UGMA, the remaining assets must be given to the child at age 18.

Can my spouse and I have the same will?

No. Every individual has his or her own assets and must have his or her own will. Of course, you are free to discuss your will with your spouse or let him or her read it. It is recommended that you and your spouse have your wills prepared by separate attorneys.

IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?

- See a legal assistance attorney. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. The Netherlands Law Center stands ready, willing and able to help you in these matters. When you go to your appointment with the legal assistance attorney, ensure you bring a copy of all documents or court papers that relate to your legal issue.
- **Contact the Netherlands Law Center at DSN 360-7688 or Commercial 046-443-7688.** We are located at Building 37, USAG Schinnen.