

Tyndall AFB Preventive Law Program Series

Legal Assistance Series

WILL INFORMATION

This handout contains basic information. If you have specific questions, come in to see a Judge Advocate for legal assistance.



OFFICE OF
THE STAFF JUDGE ADVOCATE 325 FW/JA
TYNDALL AFB, FL 32403

WILLS AND ESTATE PLANNING

I. INTRODUCTION

This handout contains a lot of important information you should read before coming in to have your will prepared. Although it may take a little bit of time to go through, your family will definitely benefit from it in the long run. If you have any questions which this handout does not answer, please consult with an attorney during Legal Assistance hours.

You should thoroughly review this handout and complete the Will Worksheet prior to the time you discuss your estate plans with an attorney. The Will Worksheet is also available online at <http://www.tyndall.af.mil/325FW/JA/handouts.htm>. Before appointing anyone to serve on your behalf, you should consult with them to ensure they are able and willing to serve in these positions. If you are married, you may also want to consult your spouse.

II. BASIC WILL

A will is a document which directs how and to whom your property will be distributed after your death. If you have children, it gives you the opportunity to plan the care of your children should you die before they reach majority. You can designate whom you want to serve as executor/personal representative of your estate instead of the probate court deciding for you. You can also avoid the expense of bond premiums, which are normally required of the personal representative.

Dying Without a Will

If you die without a will, your property will be distributed according to the laws of the state of your legal residence. These are known as the laws of intestacy. Those laws determine what relatives will take part of your estate. They differ in each state and could result in someone you dislike, or who is very well-off, getting all or part of your property.

PROPERTY NOT PASSING UNDER A WILL

Insurance Policies

Proceeds from insurance policies do not ordinarily pass under the will. Therefore, you should ensure your beneficiaries listed under SGLI or any private life insurance contract are the ones you want. You may want to designate that a trust, which you can set up in your will, will be the beneficiary of insurance proceeds. This option is particularly appropriate if you want the insurance proceeds to go to a minor child. See the SGLI handout for more information.

Real Estate

If you own property with another as joint tenants with right of survivorship or tenancy by the entirety (as husband and wife), at the time of your death the other person automatically gets that property without going through probate. However, if you own property singly, or as tenants

in common with others, you can pass that property to someone under the will. If you decide to do this, make sure to bring a legal description of the property to your will appointment.

Community Property Interest

If you are from a community property state, you cannot will away property that is community property of your marriage.

Homestead

In some states, including Florida, you cannot will away your homestead if you are survived by a spouse or minor child, except you may devise your homestead to your spouse if you have no minor child. If you will away homestead property, your surviving spouse may nevertheless get a life estate in the home. In Florida, for estate distribution purposes, a homestead is defined as the primary residence and adjoining lands owned by a person who is survived by a spouse or minor child. An owner of a homestead cannot give away such property if a spouse or minor child survives him or her. The homestead can be given to a spouse if the owner has no minor children at the time of death. If a spouse and children survive the owner, the spouse gets the right to live in the house for the rest of his or her life. At his or her death, the house passes to the children. The homestead restriction only applies if you hold the title to your home *in your name only or as "tenants in common with no right to survivorship"* with your spouse. If you hold title to your home with your spouse as "tenants by the entirety" or "joint tenants with right of survivorship," then, at the time of your death, your surviving spouse becomes the sole owner of the property.

Final Pay and Allowances

Do not overlook who gets your final pay and allowances. The Record of Emergency Data Card, DD Form 93, determines who will get certain military benefits to which your family may be entitled. During the Vietnam era, the form was used to determine the recipients of the tens of thousands of dollars held in the Uniformed Services Savings Plan for those in a missing status.

Joint Checking Account “with survivorship”

If you have a joint bank account with your spouse or other person, ensure that it specifically states “with rights of survivorship,” if it is your desire that that person gets all the funds therein.

Other Property

With some property, you can designate that is “POD” (payable on death) or “TOD” (transferable on death) to whomever you choose. It is your responsibility to determine how you hold interest to all types of property. Check with the financial institution in which you have your interests to determine how your interest will pass at the time of your death.

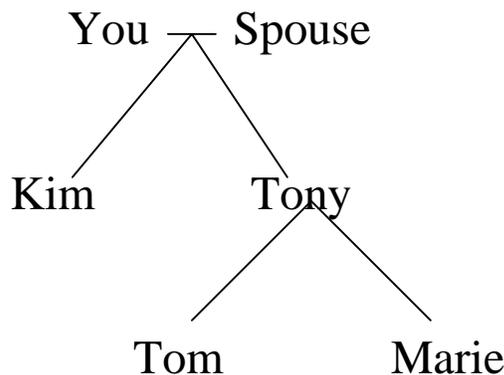
WHAT SHOULD GO INTO YOUR WILL?

Naming Your Beneficiaries

Most married people leave their entire estates to one another and rely on the surviving spouse to provide for the children. If both parents were to die simultaneously, they usually leave everything to their children as alternate beneficiaries. It is always recommended you name another person to inherit from you in case you and your immediate family die in a single disaster or accident.

If you desire to divide your property among a group of people (such as your children), there are two ways to provide for the distribution should some members of the group die before you do.

For example, suppose your family is composed of you, your spouse, and your two children, Kim and Tony. Tony has two children, Tom and Marie. A diagram of your family might look like this:



If you want Kim and Tony to share your property equally at the time of your death (assuming you and your spouse die at the same time or your spouse dies after you), you can direct that in your will. But what if Tony dies before you? You can direct that his share be divided equally between his children by using the term per stirpes. Thus, Kim would get $\frac{1}{2}$ of your estate and Tony's $\frac{1}{2}$ interest would be divided equally between Tom and Marie, each of them getting $\frac{1}{4}$ of your estate. In the alternative, you can say you want your property divided equally between your children per capita. For example, if Tony dies before you, at the time of your death, Kim would get all of your estate and Tom and Marie would get nothing. Note, if it is possible that you may have additional children in the future, either by birth or adoption, you should still elect between per stirpes and per capita.

Specific Bequests

If you want someone to get a specific piece of property, you can state so in your will. For example, you can designate in your will who will get a certain necklace or your toolbox. For residents of some states, including Florida, you can state in your will that you want to dispose of tangible items of personal property (this does not include land or homes, cash, stocks, bonds, or anything used in the trade business) on a separate sheet of paper. All items of tangible personal property not listed on this paper will be disposed of as you state in your will. You only need to name the beneficiary, describe the property, and sign and date the paper with two witnesses. Your signature does not need to be notarized or witnessed by an attorney. If you change your mind, you can always destroy the sheet and execute a new one, if you choose, without re-executing a will.

Disinheritance

In most states you can disinherit anyone in your family. For example, you can disinherit your children (either because you disapprove of them, or because they are financially well off and some other person is in need) as long as they are mentioned in your will. If you have a child and you do not mention him or her in the will, by law that child can get a forced share of your estate. Also, while you can disinherit your spouse, your spouse has the option to take an elective, forced share of your property (unless waived by a prenuptial or postnuptial agreement). In Florida, the spouse has the right to take whatever share you designate under the will, or 30% of your property after debts, but before taxes and expenses of administration, whichever is greater.

Personal Representative

Definition: Also known as executor or executrix, this is a man, woman or bank named in a will who collects the deceased person's assets; sees that the deceased person's debts, including taxes, are paid; and ensures any remaining property goes to the beneficiaries. For married people, the spouse is usually the first choice. It is advisable to appoint an alternate. If you are married, it is suggested you and your spouse appoint the same alternates.

Requirements: Some states impose requirements on the personal representative, such as requiring him or her to have the same state of legal residence as the decedent. For clients who are legal residents of Florida, the personal representative must be a Florida resident unless he or she is (1) a legally adopted child or adoptive parent of the decedent; (2) related by lineal consanguinity to the decedent (a direct blood relative such as a mother father or child); (3) a spouse, or a brother, sister, uncle, aunt, nephew, or niece of the decedent, or someone related by lineal consanguinity to any such person; or (4) the spouse of a qualified person. A person is also not qualified to be a personal representative if that person has been convicted of a felony, is mentally or physically unable to perform the duties, or is under 18 years of age.

Fee: The personal representative is entitled to receive a small fee for his or her services, which is paid out of the estate.

Bond Premium: Unless waived by you, the personal representative is required to post a bond premium with the court to help ensure that he or she will not steal or make some other unauthorized disposition of the assets of your estate. This is a money amount, based upon the value of your estate, which the personal representative must place with the court out of his or her own pocket. Clients usually waive the requirement when they appoint family members or friends.

Guardian

Definition: This is a person appointed to look after the affairs of a person who is legally incompetent. Such as persons (called "wards") include children under the age of 18 and people of unsound mind. There are two types of guardians.

Guardian of the Estate: This person takes care of the ward's property. This is done under the close supervision of the court, in accordance with strict rules involving costly legal

procedures. This arrangement may be avoided by giving any child's share of your estate to a "trustee" for the benefit, support, and education of that child. This appointed guardian can act as trustee or you can appoint someone else. You should discuss with an attorney to determine whether a guardianship or trust would meet your particular needs best, since each method has advantages and disadvantages.

Guardian of the Person: This is the individual who looks after the daily personal care and custody of the ward, including his or her discipline and education.

While both the guardians of the estate and the person can be different people, it is usually recommended they be the same person. If, for example, you have one sister who is a financial genius and another who is great with kids and both sisters get along extremely well with each other, you might want to designate one as guardian of the estate and the other as guardian of the person of your children.

Guardians should not normally be grandparents or elderly people, if this can be avoided. It is possible that they may be unable or unwilling to take on such responsibilities before your children reach majority. Since it is uncertain which spouse will die first, the wills of both spouses should each name guardians. Divorced, non-custodial parents cannot name a "guardian of the person." Only the parent named in a divorce decree or separation order as having primary custody can do so. However, the non-custodial parent may name a guardian in the event the custodial parent dies first.

Limitations: For most states, including Florida, the same residency requirements as for the personal representative apply.

Personal Property Memorandum

Some states, including Florida (Fla. Stat. §732.515), allow you to give away items of *tangible personal* property not disposed of by your Will in a separate document, called a Personal Property Memorandum that is referred to in the Will. It must be property *other than money, and is not property used in a trade or business*. This means you cannot give away certain property such as your home, land, stocks, or bonds in this manner. Also, you cannot use this means to give away such items as office equipment, a company truck, and other items used as part of your business. You must sign the memorandum and the items must be described with reasonable clarity.