

Tyndall AFB Preventive Law Program Series
Legal Assistance Series

**SAFEGUARDING
YOUR WILL**

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

Upkeep and Safeguarding of Your Will

WHAT IS A WILL?

A will is a legal instrument that takes effect upon death, and is revocable until death, that either makes a disposition of property (real or personal), directs how property should not be disposed, exercises a power of appointment, or appoints a fiduciary. It also allows you to appoint the person(s) that you want to administer your estate. Through the terms of your Will, you can address the care of your minor children by appointing guardian(s) of their persons and trustee(s) of their property. Your Will is probated according to the laws of the state in which you are domiciled. The state of your domicile determines whether estate or inheritance taxes will have to be paid. If you have real estate in different states, your Will may have to be probated in each state. Because a Will is a very important legal document you should read the following paragraphs thoroughly to avoid making any costly mistakes!

WHAT HAPPENS IF I DIE WITHOUT A WILL?

If you die without a will your property will be distributed in accordance with the laws of the state in which you are domiciled or in which the property is located. The state's distribution plan may be different from the one you desire. Additionally, it will be left to the state to determine the persons who will act as guardians and trustees for your minor children. The great advantage of a Will is that it allows your wishes concerning your property, beneficiaries, and children to be given full expression.

KEEPING YOUR WILL UP TO DATE:

Changing Your Will: A Will can be changed only in accordance with legal procedures. To change your Will, see a judge advocate or a private attorney. Do not delete, alter, modify, obliterate or add to any provisions of your Will by yourself because such additions may void the entire Will.

Canceling Your Will: You can cancel your Will by making a new Will which states the previous Will is revoked. You may also physically destroy your Will by burning, tearing, or drawing lines through it. If you make a new Will, you should destroy the old one so as not to create any confusion.

When To Review Your Will: You should periodically review your Will to ensure that it is up-to-date. You should consider redrafting your Will following any important change in your family situation such as marriage or divorce; after the birth, adoption, or death of a member of your family or anyone named in the Will; or if you experience a sudden change in your financial situation.

WHERE TO KEEP YOUR WILL:

There is no one best location, especially for individuals in the military who are likely to move frequently. The Will needs to be in a place where your personal representative (the person named in your Will to carry out its provisions) can easily find it in the event of your death. Some suggestions are:

Keep at Home: The Will, as well as other legal documents, should be kept in a high-quality fireproof container. Another option is to place the will in a Ziploc bag in your freezer. While an unconventional location, it is fireproof and an alternative to a fireproof safe if you do not have one available. Keeping your will at home has the advantage of making it highly accessible to your personal representative and your heirs upon your death. However, it is more susceptible to being lost, stolen, or destroyed than if deposited with an attorney or the court.

Deposit with Attorney: If you have a civilian attorney, it's likely he or she will be able to hold your Will on your behalf.

Safe Deposit Box: It has the advantage of being both safe from theft and fireproof. However, depending upon the rules of the bank and laws of each particular state, your safe deposit box may be sealed upon notification of your death. This could interfere with ready access to your Will by your heirs. Therefore, before you decide to keep your Will in a safe deposit box you should check into applicable laws and bank procedures.

Deposit with Courts: In many states, a Will may be deposited with the court for safekeeping. Upon notification of death, the court would notify your personal representative. If you are currently serving on active duty, you will probably be required to move from state to state. If your Will is deposited in a court, it would be advisable for you to take it with you when you leave that state. You may wish to leave your Will in a court located in your home state, making sure to keep that court informed of your current address as you move from assignment to assignment.

Knowledge of Whereabouts: Your personal representative *must* be informed of the location you store your Will at. This is important because the provisions of your Will cannot be followed if your Will cannot be found after your death.

PERSONAL LETTERS OF INSTRUCTION:

In addition to your Will, the Personal Letter of Instruction is a less formal document you might consider drafting. It performs two basic functions. First, it states the location of all-important papers. Second, it expresses personal desires you may have that are not appropriate for inclusion in your formal Will. This letter can be opened and read immediately upon your death. Its purpose is to provide your personal representative and beneficiaries with additional information concerning your estate. Taking the time necessary to compile this information now will greatly assist them after your death. You should consider sending a copy of this letter to your personal representative or informing him or her of where this letter is located. The following types of information are suggested to be included with this letter:

- Statement as to the location of the Will.

- Burial instructions, name of cemetery, information regarding cemetery plot deed. Whether you want to be cremated, buried, have your body donated to science, etc. Whether you desire any religious ceremony and, if so, which type. State whether you want to take advantage of military entitlements that may be due to you. (You may wish to consult mortuary affairs or a retiree's association).
- A list, including addresses, of all people you wish to be notified of your death and their relationship to you.
- The location of all important legal documents, including titles to automobiles, deeds, armed services discharge papers, marriage and/or divorce certificates, adoption records, and other documents of similar importance.
- The location and listings of all life insurance policies, including the name of the insurance company, policy number, beneficiaries, and the amount of coverage.
- The name of the bank, account numbers of all savings and checking accounts, whether held individually or jointly, to include all Individual Retirement Accounts (IRAs).
- A list of all U.S. Savings Bonds, in whose name they are registered, where they are located, and their denomination and serial numbers.
- A list of all stocks, bonds, and certificates of deposit and their location.
- The location of any safe deposit box and the keys.
- The location of your State and Federal Income Tax returns.
- A letter to a loved one to be opened by that person after your death.

If you have any questions, please contact a judge advocate at the nearest legal office.