



OFFICE OF THE STAFF JUDGE ADVOCATE 501st COMBAT SUPPORT WING RAF ALCONBURY / RAF CROUGHTON, UK



WILL: Do You Need It ... And Why?

Introduction

When asked, “Do I need a will?” the Legal Office generally recommends having a will. A will gives you decisional control, lets you give gifts to specific beneficiaries, and minimizes confusion after your death. It is important to understand the distinction between the will and the living will.

The first document is the *will* itself. A will is a legal document that designates how you want your money and property (your estate) to be distributed after your death. It also specifies your wishes regarding funeral and burial arrangements, and, if you have children who are minors, it states whom you request the court to appoint as their guardian.

The second document is the *living will*. This document contains directives concerning the termination of medical treatment. This document provides that the signer’s life shall not be artificially prolonged by extraordinary measures when there is no reasonable expectation of recovery.

Other definitions and key concepts are important to fully understand the will process. Some of these definitions are detailed below.

1. **Testator.** A testator is a name given to a person who is the subject of the will. In other words, if you come into the legal office for a will, you are the testator of that will.
2. **Beneficiary.** A beneficiary is a person or organization designated to receive some or all of your assets upon your death. You can name as many beneficiaries as you like.
3. **Executor or Personal Representative.** An executor, or in some jurisdictions it is called a personal representative, is the person you appoint in your will to settle your estate. This person will have the administrative responsibility of paying your bills and taxes (including estate taxes), supervising the process of locating and safekeeping your assets, and making sure that the wishes expressed in your will are carried out. In essence, this person is administratively in charge of the estate.
4. **Probate.** Probate is a court procedure by which assets pass from a deceased person to the proper beneficiaries. A judge has the authority to validate a will and then order that the assets subject to the will be distributed.

The Importance of Having a Will

There is a big misconception that if you die without a will (“intestate”), your estate passes to the state of your legal residence. Technically this is possible, but it is saved for the last resort. For example, if you are single with no children but your parents survive you and you desire everything to pass to your parents, even without a will, the law states that your estate passes to your parents. There are lots of different scenarios which vary by state but without a will you are allowing the state to make decisions based on its rules of intestacy.

Here are some good rules of thumb for you to follow: You need a will if you: (1) have dependent children; (2) have any money to your name; (3) own anything valuable (house, car, electronics, jewelry, etc.); or (4) want to give gifts to specific family, friends, or charities in the event of your death. ***Remember, however, just because you feel that you do not need a will does not mean that you should not have a living will or durable power of attorney.*** These documents can be prepared separately and are always highly recommended.

With that said, what actually happens if you die **without** a Will? That answer depends on which state you claim as your legal residence. While we can’t outline every state’s intestate laws here, there are some common traits.

If you die without a will your estate will be handled in probate court by the state—it basically means that since you did not put your wishes in writing, the court settles your estate for you. This is also when your family is most likely to find themselves in legal battles over your estate. If one relative objects to how things are being handled, the whole family could spend months tied up in argument. Simply put, not having a will means your wishes most likely won’t get carried out the way you wanted, and it can lead to family friction. Making a will is the best way to declare what *you* want to happen and to provide for your loved ones, instead of letting the state make these decisions for you.

What happens if you marry after you drafted a will while you were single, but failed to update it upon marriage? If there is a will, the surviving spouse can ***renounce*** it and the inheritance it contains (if any), and instead choose to take a share of the estate specifically provided by state law. Historically, all of a family’s property might be titled solely in the husband's name. The "elective share" protects a woman (or man) against being "written out" of a spouse's will.

For example, a husband might have all the couple's property in his name alone, and write a will directing all of it to his children from a previous marriage. The current wife could file a petition in probate court to take her "elective share" of the estate under state law. Usually the surviving spouse can take about one third to one half of the estate. That share varies among the states, and so does the definition of "estate" that is used in the calculation. Also, state laws contain a very wide variety of significant details, limits, dollar allowances and exceptions. These are all involved in determining what and how much property the surviving spouse can elect to take from the deceased spouse's estate, *instead of* whatever he/she is left in the will.

What about the children? When there are minor children, a will should always be used to name a guardian(s) of their *persons* and *property*. Alternate guardians should also be named. Of course, if there is a surviving parent, he/she automatically is guardian, if living in the same

household. In a divorce situation, the parent with legal custody of the child(ren) should designate a guardian. Understand, however, that if somebody besides the other parent is named, this designation might not be binding; when a custodial parent dies, the non-custodial parent always has priority in seeking guardianship and custody, unless unfit. Be aware, too, that the court will probably have to approve the proposed guardian eventually, even if named in a will (unless he/she is the surviving parent, in the same household). The purpose of the will in this regard, though, is to guide the court, and to avoid family arguments over who is better qualified.

If you feel it is necessary or appropriate, two guardians can be appointed - one over the child himself, and one (presumably experienced) over the child's property. Consider carefully, however, the appropriateness of leaving money or other property outright to young children, even if a qualified guardian is available. Guardianship is a cumbersome way to manage financial affairs. Periodic reports and accounting to the court are required, and flexibility is limited by law.

What about "joint wills?" We do not encourage married couples to enter into a joint will. This is a single will shared by two people, usually spouses. If both spouses do not die simultaneously then inevitably it creates issues upon the death of one of the signatories.

What about holographic wills? Why not just write your intentions on a bar napkin? About half the states do NOT recognize holographic (handwritten) wills. Since you have the legal office at your disposal there really is no reason not to have a will professionally prepared. We do NOT recommend writing your own will as there are many nuances which can create errors. Be aware that a holographic will likely will be problematic your beneficiaries, since it is common for courts to attempt to interpret the will's true meaning causing delays.

What if I bought property while stationed overseas? If you bought property in England, the legal office strongly recommends that you obtain a separate will governed by English law. Additionally, the local will governing your property should refer to your stateside will.

Resources

<https://aflegalassistance.law.af.mil/>

RAF Alconbury and RAF Croughton Legal Office Hours

All Services by Appointment Only (email 501cswja@us.af.mil)

Tuesdays and Thursdays 1000-1200 & 1300-1400

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