

WILLS

Why Should I Have a Will?

1. A will lets you decide how your property will be distributed upon your death. You may make any distribution consistent with the laws of your state of legal residence.
2. With a will, you choose the person to serve as the personal representative of your estate and settle your affairs after your death in accordance with the terms of your will. Otherwise, a court will appoint an administrator who may be unaware of your wishes.
3. A will protects you from the risk of additional expenses and court costs that can be involved in the administration of an estate without a will.
4. Parents choose the guardian for any minor children should both parents die.

What If I Die Without A Will?

- If you die without a valid will in effect, state law takes over and provides for choosing your executor, dividing your assets and selecting a guardian for your children without any allowance for your wishes.
- The state will distribute your assets according to a statutory formula established in state law. This procedure may not provide for your children in the manner you want, especially if you have children from a previous marriage.
- "Blended" families, where both spouses have children from prior marriages, are greatly at risk if either parent dies without a will in force.
- One misconception is the belief that if you die without a will, your property is given to the state. This is not true. Only those persons who die without a valid will and have no living relatives within a certain degree of relationship will have their property forfeit to the state. Such an occurrence is extremely rare.

What Do These Words Mean?

- A will uses special terms to explain who gets what. These terms include:
- Primary Beneficiary: a person or persons named in the will and given property under the terms of the will.
- Alternate Beneficiary: a person or persons who receive the property under the will if the Primary Beneficiary dies before you do.
- Second Alternate Beneficiary: a person or persons who receive the property under the will if both the Primary and Alternate Beneficiary die before you do.
- Per Stirpes: allows the children of your named beneficiary to divide the share of a deceased parent.
- Per Capita: divides your estate amongst only the children that are living at the time of your death.

- Personal Representative (Executor): an individual responsible for gathering and distributing your assets and filing the will in probate court after your death.
- Guardian of Minor Children: the person or persons who would care for your children if both you and your spouse should die. A child under the age of eighteen is considered a "minor," though a different age can be established by the will if consistent with state law.
- Testator/Testatrix: the person who is making the will and who must die before the will takes effect.

How long is A Will Valid?

- A will does not become enforceable until the death of the maker of the will. Therefore, a will may be changed or amended at any time, provided any change is properly executed.
- NOTE: A will's terms cannot be changed by writing something in or crossing something out once the will has been executed. In fact, any writing on the will other than signatures may invalidate the will and render it unenforceable.

Common Will Provisions

While each person's will is unique, wills usually contain certain similar provisions to avoid common problems. These include provisions that:

- revoke all prior wills,
- pay all medical and funeral expenses,
- distribute property through a residuary clause (all of your property) or a specific bequest (an individual item of property),
- provide for the protection of a minor child through granting certain powers to the executor,
- appoint and grant specific powers to a named personal representative,
- "predecease" any beneficiary that dies within thirty days of your death (to reduce probate and tax consequences),
- appoint and grant specific powers to a guardian for any minor children, and
- if applicable, state that you have served in the Armed Forces and direct your executor to inquire whether your family may be entitled to benefits.

Will Limitations

Real Property: You may own real property (land) that will not pass to your beneficiaries under the terms of a will and never enter the probate estate. Property owned with another person as "joint tenants with right of survivorship" passes automatically to the surviving owner upon the death of either co-owner. Examine your deed to see if this applies.

Life Insurance: Life insurance in your name (including SGLI) is paid at your death to the named beneficiaries in the policy, not to those persons named in the will, unless your policy expressly says otherwise. The life insurance proceeds are exempt from taxes and pass directly to the named person(s) without the delay associated with probate of a will. Putting your life insurance proceeds through your will forfeits both of these benefits. To make changes to a life insurance beneficiary, change the designation on the SGLI form.

ADVANCE MEDICAL DIRECTIVES

A living will is a document addressed to your treating physicians. It instructs medical authorities to withhold or withdraw life sustaining procedures in the event of a terminal condition, a coma, or a persistent vegetative state. A terminal condition is an incurable condition which, despite the application of life sustaining procedures, will still cause eventual death. A coma is a profound state of unconsciousness where there is not reasonable expectation that the person will regain consciousness. A persistent vegetative state is a state of severe mental impairment where only involuntary body functions exist and there is no reasonable belief that the situation will improve. All three of these conditions must be certified by two physicians prior to a living will being effective.

A durable medical power of attorney allows someone you have appointed to make the determination about continued life support and other medical decisions the patient is incapable of handling. A durable power of attorney is broader than a living will because it will be effective whenever you are unable to make medical decisions for yourself, and not merely for a terminal condition, coma, and persistent vegetative state. It is important to choose someone who will respect your wishes and to discuss with them what your wishes would be before a situation arises that requires their decision.

Hopefully, neither of you or any of your relatives will face these severe medical difficulties. However, when such situations arise both a living will and a durable medical power of attorney can resolve many issues such as who to call and where they may be contacted.

What Should I Do?

Pick up a will worksheet at the legal office during regular hours, 0730-1630, or download a copy from the Internet. Complete the worksheet and visit the legal office during walk-in hours, 0800 to 0900 Monday - Thursday. Allow sufficient time to complete the process; we estimate at least two hours since there is a formal process for the signatures. Please plan ahead to avoid a last-minute rush when deploying.