

# LAST WILL & TESTAMENT



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## WHAT IS A WILL?

A Last Will and Testament is the legal document which controls the disposition of your property at death and may provide for guardianship for your minor children after your death. A will is not effective until death. As long as you are living, your will has no effect.

## WHY HAVE A WILL?

If you die without a will (called dying intestate), your state of legal residence may distribute your property in ways you never imagined. In other words, if you don't make a will, you don't have any say as to how your property will be divided.

If you die intestate, the court will appoint a person to administer your estate, pay your debts and taxes, and distribute your property.

Most important for mothers and fathers, however, is not the disposition of their property after their death but rather the proper care and custody of their minor children. Grandparents, other family members and godparents do not automatically receive custody of children who do not have a surviving parent. Your will gives you the chance to recommend a guardian of your choice, although the court must usually make a final determination based on the best interests of the child.

## HOW DO I GET A WILL?

Go to <https://aflegalassistance.law.af.mil> to fill out a will worksheet with the necessary information to draft your will. Once you have completed the worksheet, you will be given a ticket number. Make a legal assistance appointment to meet with an attorney by calling 828-2238 and providing your ticket number.

Bring your completed worksheet and any questions you have to your legal assistance appointment. An attorney will draft your will and help you execute (sign) your will in front of witnesses and a notary public.

## THE PEOPLE IN YOUR WILL

Beneficiaries are the people who will inherit your property.

A Personal Representative (PR) is the individual you choose to handle your estate after you die. This person is often also known as the executor or, if female, executrix. The PR should be trustworthy and capable of handling finances and property. Your Will should name an alternate PR in case your first choice is unable or unwilling to perform. The PR is entitled to receive compensation from the estate for the service they provide. The amount of compensation is normally a reasonable amount set by the court. The duties of the PR may include:

- (1) Collecting and preserving your property;

- (2) Preparing and filing an inventory of your estate;
- (3) Having your property appraised;
- (4) Giving notice to your creditors;
- (5) Paying all debts of the estate;
- (6) Preparing and filing state and federal tax forms;
- (7) Paying any taxes due on the estate; and
- (8) Distributing your estate to your named beneficiaries;
- (9) Hiring professional attorneys, accountants, appraisers, realtors, investment managers, cleaners, repairers and the like to assist with all of this.

A Guardian is the person you name to care for any minor children who survive you. The court will normally honor your choice of a guardian unless it would not be in the best interests of the child(ren). Ask potential guardians whether they will be willing to take your child(ren) before you name them in your will.

## TRUSTS

A trust is a separate legal entity that may be created by your will. Assets in trust are held by a trustee for the benefit of named beneficiaries. A trust may be a useful tool if you wish to leave assets to your children, but wish to place restrictions on how your assets will be used until the child reaches the age of your choosing (18, 21, etc.). If you wish to designate an age above 21, you must use a trust or your child will have a legal claim to the assets upon reaching the age of majority.

Trusts often specify that some of the assets may be used for the health, education, and maintenance of the child before reaching the age specified, at the discretion of the trustee. The remainder of the trust would then be distributed when the child reaches the age specified.

## LARGE ESTATES

For 2021, the unified gift and estate tax exclusion is \$11.7 million. That is, estates are only taxed for the value that is over \$11.7 million. Gifts given to any single person with a cumulative value of more than \$15,000 during any taxable year may count toward the estate tax limit. Let your legal assistance attorney know (1) if your assets, including life insurance, total more than \$1,000,000, (2) if you have relatives from whom you may inherit such an amount, or (3) if you have the potential for significant asset growth. It may be necessary to refer you to a civilian attorney that specializes in estate planning.

Note that the taxable value of your estate includes (1) the proceeds of some life insurance policies, (2) the value of certain annuities payable to your estate or your heirs and (3) the value of certain property that you transfer during the three years before your death. Your estate may also be subject to taxes by your state of legal residence or by states in which the property making up your estate is located. This area of law is in a state of flux so you should have your estate plan reevaluated every few years.

**\*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (August 2021)**

**For additional information on this and other legal topics, see the Air Force Legal Assistance Website: <https://aflegalassistance.law.af.mil>**