



## ASA DIX LEGAL BRIEF

A PREVENTIVE LAW SERVICE OF THE JOINT READINESS CENTER LEGAL SECTION  
UNITED STATES ARMY SUPPORT ACTIVITY DIX

*KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS*

# *WILL WORKSHEET*

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### PRIVACY ACT STATEMENT

**AUTHORITY:** Title 10, USC Section 3013. **PRINCIPLE PURPOSE:** To assist the attorney in preparing legal documents for the client and to prepare statistical reports on legal assistance services. **ROUTINE USES:** To provide legal advice and to prepare legal documents for the client. **DISCLOSURE:** Is voluntary; however, nondisclosure may preclude the legal assistance desired by the client.

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Welcome to the Joint Base Legal Assistance Office. This worksheet will answer general questions concerning Wills, and it will provide a general framework for your initial Will interview with an attorney. Please complete this worksheet before your appointment. After you complete it, an attorney will discuss it with you and answer any questions that you might have.

**THIS IS NOT A WILL! THIS IS ONLY A WORKSHEET! IT WILL PROVIDE US WITH THE NECESSARY INFORMATION TO PROPERLY DRAFT YOUR WILL. IF YOU HAVE ANY QUESTIONS WHICH ARE NOT ANSWERED BY THIS WORKSHEET, PLEASE WRITE THEM DOWN IN THE SPACE PROVIDED AND DISCUSS THEM WITH THE ATTORNEY.**

While filling out this worksheet, make sure you (1) read everything, (2) note questions that you have, (3) when given options, circle the appropriate answer, and (4) print clearly, using capital letters. Also, when providing someone's name, print his or her full name and relationship to you.

**WHAT IS A WILL?** A Last Will and Testament (commonly referred to as a Will) 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 SHOULD I MAKE A WILL?** When you die without a Will (or die "intestate," as the law calls it) your property is distributed according to state law; you will not have any personal say as to how your property will be divided. Under state law, generally your spouse and children will take your property upon your death. If there is no spouse or children, generally your parents will take your property, then siblings, grandparents, and children of the grandparents. If no legal relation can be found, your property will eventually go to the state. Many individuals may prefer that their entire estate go to the surviving spouse and that can be designated in your Will. Most important, for mothers and fathers, however, is not always 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 should specify the individual, as well as an alternate, who you would like to designate as the guardian of your minor children. This decision, on your part, will be of great assistance to the court in determining who will receive the custody of your children. Note, however, that the decision to make a Will is strictly a personal one, dictated by your own unique financial and personal circumstances; no one can be ordered or required to have a Will.

**DOES MY WILL CONTROL ALL OF MY PROPERTY WHEN I DIE?** No, some things are not controlled by your Will. Although the proceeds of insurance policies may be considered part of your estate, a Will does not change the designated beneficiaries of an insurance policy, including Soldiers Group Life Insurance (SGLI); the proceeds will normally pass to the beneficiaries designated in the policy. In fact, a Will does not change the designated beneficiaries of any financial asset; the money in the account goes directly to that individual when you die, bypassing probate. Property owned as joint tenancy with right of survivorship does not become part of the estate and is not subject to probate fees; the other joint tenant will automatically get the entire property at the decedent's death. Likewise, certain bank accounts which are payable on death go directly to the beneficiary. This property and money passes to the person outside the probate proceeding. These devices are often used as a means of passing property outside the estate.

**WHAT IS PROBATE?** Probate is a court procedure which settles the estate of a deceased person, specifically resolving all claims and distributing the decedent's property. Probate proceedings also address the administration of your estate, taxes, the guardianship of your children, proves the will to be valid or invalid, etc.

### **CLIENT INFORMATION**

PRINT YOUR FULL NAME: \_\_\_\_\_  
(FIRST, MIDDLE, LAST, SR, JR, III, etc.)

Social Security Number: \_\_\_\_\_ Sex: Male Female

Status (circle one):    Active Duty                      Spouse/Dependent of Active Duty  
   Retiree                                      Other: \_\_\_\_\_

If you are the Spouse of an Active Duty Service Member, have you ever served on Active Duty?  
No                      Yes

**WHAT IS MY LEGAL RESIDENCE?** Your legal residence is the state in which you have your true, fixed, and permanent home and to which, if you are temporarily absent, you intend to return. Voting, paying taxes, owning property, and motor vehicle registration are some indicators of one's legal residence. If you are a citizen of the United States, you must be a legal resident of some state. You cannot be a citizen at large. If you are a naturalized U.S. citizen, you are considered to be a resident of the state in which you were naturalized. Your legal residence is



subject to probate fees; the other joint tenant will automatically get the entire property when you die. As previously stated, although the proceeds of insurance policies may be considered part of your estate, a Will does not change the designated beneficiaries of an insurance policy; the proceeds will normally pass to the beneficiaries designated in the policy.

**DO I NEED TO INCORPORATE ESTATE TAX PLANNING IN MY WILL?** If property or assets are left to a spouse who is a U.S. citizen, the federal estate tax usually does not apply. This is referred to as the “marital deduction” exemption. Federal estate tax also usually does not apply if property or assets are left to a charitable organization. However, the transfer of property to other individuals or organizations may be subject to estate taxes, depending on the value of the estate. For situations other than the marital deduction or charitable organizations, the amount an individual can leave to his or her heirs tax-free is \$2 million for 2006-2008; this amount will increase to \$3.5 million in 2009. However, in 2010, the federal estate tax will supposedly be repealed altogether.

**If you add together all your property, including life insurance policies that you own, and are not married, is the total more than \$2,000,000 for 2006-2008 or \$3,500,000 for 2009?**

No    Yes

1. **IF YES**, be sure to complete the **asset inventory** section at the end of this worksheet and inform your attorney.
2. **IF NO**, you do **not** need to fill out the **asset inventory** section.
3. **IF YOU ARE NOT SURE**, fill out the **asset inventory** section to the best of your ability and ask your attorney for assistance.

### **PERSONAL REPRESENTATIVE OR EXECUTOR / EXECUTRIX**

**WHAT IS A PERSONAL REPRESENTATIVE?** An executor (executrix, if female), also referred to as a personal representative, is the person who will manage and settle your estate, after your death, according to your Will. The executor, executrix, or personal representative collects your property, receives and pays claims against your estate, such as court costs, taxes, and debts, disputes any claims, and distributes your property according to your Will. You should also consider naming an alternate executor in the event that the named executor is unable or unwilling to act as executor of your estate. In your Will, you can require that your executor or substitute executor be required to post bond or other security, or you can waive this requirement, thereby saving expense to your estate. A bond is the executor’s/executrix’s promise to reimburse any loss to the estate as a result of his or her negligence or wrongdoing in carrying out his or her required duties.

**WHO SHOULD I PICK AS MY PERSONAL REPRESENTATIVE?** Choose your personal representative or executor/executrix with care. Your personal representative will have an important role; therefore, you should name someone you trust and in whom you have confidence.

Many married people name their spouse as their personal representative. However, regardless of who you name, you should discuss the matter with him or her before you make your Will.

Who do you wish to name as the personal representative or executor/executrix of your Will?

Spouse \_\_\_\_\_ Other \_\_\_\_\_  
(Name and relationship to you)

Address (City, State, Zip): \_\_\_\_\_

Phone Number: \_\_\_\_\_

Do you wish to name an alternate personal representative or executor/executrix? No Yes

Name (and relationship) of alternate: \_\_\_\_\_

Address (City, State, Zip): \_\_\_\_\_

Phone Number: \_\_\_\_\_

Is either of the above named individuals residents of your state? No Yes

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### **BENEFICIARIES / DISTRIBUTION OF PROPERTY**

**WHO SHOULD I DESIGNATE AS MY BENEFICIARIES?** A person who receives or inherits your property, through a Will, is referred to as a "beneficiary." You may leave all of your property to one beneficiary, or you may divide your estate among several beneficiaries. You may designate in your Will that several different items of property or sums of money shall go to different persons. With some exceptions, you are generally free to give your property to whomever you desire. For example, in most states, a married person cannot completely "disinherit" or exclude a spouse. Spouses are entitled to part of the other spouse's estate, referred to as a "statutory share". This "statutory share" ranges generally from 1/3 to 1/2 of the other spouse's estate. Some states, such as Louisiana, also provide a "statutory share" of the estate to children of the decedent, thereby preventing them from being disinherited. If you have questions concerning the statutory share law in your home state, you should ask a Joint Base Legal Assistance Attorney. There are also different levels of beneficiaries: "Primary beneficiaries"- those who will inherit your property upon your death; and "Secondary beneficiaries"- those who will inherit your property in the event the "Primary beneficiaries" die before you. You may want to also select a Third beneficiary in the event that both the Primary and Secondary beneficiaries do not survive you or predecease you.

- If you are married, you should consider naming your spouse as primary beneficiary. If you also have children, you should consider naming them as alternate beneficiaries. Alternate beneficiaries will only receive your property if everyone named before them should pass away before you.

**CAN I GIVE SPECIFIC THINGS TO SPECIFIC PEOPLE?** Yes. You can make specific bequests in your Will by fully describing both what you want to give and the person who is to receive it. However, you should be careful about making specific bequests. If you dispose of the property that you describe in your Will before you die, or if there is any doubt about the exact property that you have described, you may be creating difficulties for your personal representative. Therefore, you should discuss with your attorney whether you should make specific bequests in your Will.

Do you have any specific bequests? No Yes  
(Describe the property and to whom it will be given)

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**CAN I WRITE A LETTER OF INSTRUCTION TO MY PERSONAL REPRESENTATIVE TO DISTRIBUTE MY PROPERTY IN A CERTAIN WAY?** Yes. In your Will, you can advise your personal representative that, in addition to your Will, you have left a non-binding memorandum of instruction for him or her to consider in deciding how to distribute your property. There are certain formalities to follow when drafting this non-binding memorandum of instruction; consequently, you should discuss this option with your attorney.

Who would you like to receive your property when you die?  
(circle or print full name(s) and relationship)

All to:      Spouse                  Children                  Other: \_\_\_\_\_

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Partial to:    Spouse                  Children                  Other: \_\_\_\_\_

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1<sup>st</sup> Alternate:                          Children                  Other: \_\_\_\_\_

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- Remember, alternate beneficiaries will only receive your property if everyone named before them should pass away before you.

Last Resort. If everyone you have named so far passes away before you, how do you want your property to be divided? Check one of the following:

\_\_\_\_ To my Heirs - (Property will be divided among your remaining family members according to the laws of your state.)

\_\_\_\_ To a Charity - (name and location): \_\_\_\_\_

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Do you wish to disinherit someone other than your spouse or children?    No                      Yes  
If so, whom (please provide the name and relationship to you)? \_\_\_\_\_  
\_\_\_\_\_

Do you wish to disinherit anyone who contests your Will?                      No                      Yes

**GUARDIAN**

**WHAT IS A GUARDIAN?** A guardian is a person, institution, or agency appointed by a court to manage the personal affairs of minor children (or a special needs adult), when no parents survive or the one surviving parent is adjudged unable to care for his or her child(ren). Thus, a legal guardian is the person who will act as a parent(s) for any of your children who are minors at the time of your death. A guardian should be named in a Will to ensure that minor children and their estates are properly cared for. Although a court of law is not obligated to appoint the guardian you name in your Will, the court will certainly consider your choice and it places great weight on the parents' selection. You can also name a substitute guardian. This would provide a guardian for your children in the event that your spouse or other named guardian dies before you, or you and your spouse die at the same time.

**WHO SHOULD I NAME AS GUARDIAN FOR MY CHILDREN?** You should choose your children's guardian (and alternate guardian) with extreme care. You should discuss the decision with both your spouse and the person you are thinking of naming as guardian; do not automatically assume that your parents or any other relative will be suitable guardians. In making your decision, you should consider such factors as the guardian's age, religion, financial situation, and current relationship with your children. Additionally, you and your spouse should agree on who should be guardian of your children. If you both die in a car accident and your Wills designated different guardians, then a court would have to decide who will be the children's guardian. This could cause undue hardship, both financial and emotional, on all the parties concerned.

Do you have children from a previous relationship?                      No                      Yes

Does your spouse have children from a previous relationship?                      No                      Yes

Who do you desire to appoint as guardian of your minor children?  
\_\_\_\_\_

Address (City, State, Zip): \_\_\_\_\_

Phone Number: \_\_\_\_\_

Do you desire to appoint an alternate guardian for your minor children?    No                      Yes

Alternate Guardian: \_\_\_\_\_

Address (City, State, Zip): \_\_\_\_\_

Phone Number: \_\_\_\_\_

### **TESTAMENTARY TRUSTS**

**WHAT IS A TESTAMENTARY TRUST?** A Testamentary Trust is a Trust created in a Will, which means the Trust only becomes effective upon your death. The terms of the Trust are detailed in the actual Will. The individual who creates a Trust is referred to as a grantor, trustor, or settler and the individual(s) who receives the benefit from the trust (i.e. money or property) is referred to as a beneficiary. The person who holds legal title to the assets for the benefit of one or more Trust beneficiaries, and whom is responsible for managing the assets according to the terms of the Trust, is referred to as a trustee.

**HOW MIGHT A TESTAMENTARY TRUST BE USED FOR THE BENEFIT OF MY CHILD(REN)?** Testamentary Trusts are primarily used to prevent large sums of money (such as insurance proceeds) or real property from being distributed directly to children or young adults. For example, a Testamentary Trust may provide that if there is no surviving spouse, then all of the assets will be held and managed by a designated trustee until the children or young adults reach certain ages. A “separate” trust sets up an account for each of your children. A “unitary” trust creates an account that all of your children share. A trustee must be selected with care (“trust” is in the title). The trustee should be a person you have confidence in; someone who knows your children and understands their needs.

**IS THERE AN ALTERNATIVE TO A TESTAMENTARY TRUST?** Yes. Specifically, the Uniform Gifts to Minors Act (UGMA) or the Uniform Transfer to Minors Act (UTMA) creates custodianships which are generally recognized in state law and may be preferable to creation of a trust in your will. Under the annual federal gift-tax exclusion, each child may be given gifts up to a certain amount without incurring any tax consequences. UGMA/UTMA accounts can be established during your life or through your Will, at death, for the benefit of your child(ren), and then fed with proceeds of your insurance policies like SGLI, or with property from your estate, on death. Like the trustee, the UGMA/UTMA custodian will be charged with administering funds for the benefit of your children. Unlike a trustee, the custodian’s duties and responsibilities are defined in the Uniform Statutory Acts rather than a trust instrument. Also, when a custodian is a life insurance beneficiary, payment to the custodian should be made immediately after death without any court intervention. However, the same life insurance company may not pay immediately on a trust designation.

Do you want the assets of your estate managed for any minor children beneficiaries by a UTMA or TESTAMENTARY TRUST (check one)?

A. UTMA: \_\_\_\_\_

Custodian shall be whoever is named guardian?

NO

YES (if no, print information below)

Named Custodian: \_\_\_\_\_ Relation: \_\_\_\_\_

City/State: \_\_\_\_\_

B. TESTAMENTARY TRUST: \_\_\_\_\_ SINGLE: \_\_\_\_\_ SEPARATE: \_\_\_\_\_  
(For all beneficiaries)

Trustee: \_\_\_\_\_ Relation: \_\_\_\_\_

City/State: \_\_\_\_\_

Alternate Trustee: \_\_\_\_\_ Relation: \_\_\_\_\_

City/State: \_\_\_\_\_

Age of Distribution: \_\_\_\_\_

Trustee: \_\_\_\_\_ Relation: \_\_\_\_\_

City/State: \_\_\_\_\_

Alternate Trustee: \_\_\_\_\_ Relation: \_\_\_\_\_

City/State: \_\_\_\_\_

Age of Distribution: \_\_\_\_\_

Making property and guardianship arrangements for children is a significant responsibility. Based upon your completion of this worksheet and your personal desires, your attorney will help you develop an appropriate plan when you meet together. Your plan should fully consider distribution of Servicemen's Group Life Insurance (SGLI) proceeds and other life insurance.

### **FUNERAL ARRANGEMENTS**

You may have a strong desire regarding funeral arrangements (i.e. burial at a certain location or gravesite, cremation, or military honors). However, if you elect to state your desires in your Will, do not rely on your Will alone to communicate those desires, as Wills may not be read prior to the funeral! As a practical matter, your funeral arrangements are likely to have been carried out already by the time your Will is read. Finding out, after the fact, that the arrangements were contrary to your Will may cause some dismay for your survivors. Therefore, it is recommended that you also communicate your desires to your next of kin NOW. You may also make the receipt of an inheritance contingent on the beneficiary's compliance with your burial instructions.



**\*\* ASSET INVENTORY \*\***

**TYPE OF ASSET**

**VALUE AND OWNERSHIP**

Husband                      Wife                      Owned jointly

**LIFE INSURANCE PROCEEDS**

Payable on your death: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Payable on spouse's death: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**PERSONAL PROPERTY**

Motor vehicles \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Furniture \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Jewelry / Furs \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Art \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Antiques \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Miscellaneous belongings \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Other \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Other \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**REAL PROPERTY**

Land \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Houses \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Other \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**INVESTMENTS**

Stocks \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Bonds \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Mutual Funds \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Pension Funds \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 IRAs \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Savings Bonds \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Other \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**CASH**

Cash on hand \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Savings accounts \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Checking accounts \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Certificates of deposit \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Money market accounts \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Other \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**OTHER ASSETS**

\_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 TOTAL ASSETS FOR EACH SPOUSE \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 TOTAL COMBINED ASSETS \$ \_\_\_\_\_

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