

**WILLS, LIVING WILLS  
AND DURABLE MEDICAL POWERS  
OF ATTORNEY**

**THE ROBINS AFB  
PREVENTIVE LAW SERIES**



**OFFICE OF  
THE STAFF JUDGE ADVOCATE  
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**THIS PAMPHLET ANSWERS FREQUENTLY ASKED QUESTIONS ABOUT WILLS  
AND LIVING WILLS. YOU SHOULD SEE AN ATTORNEY FOR ASSISTANCE IN  
PREPARING A WILL.**

# WILLS

**This pamphlet is designed to assist the military member in preparing a will. The member should consult an Air Force or civilian lawyer to prevent any misunderstanding in the settlement of the member's expressed wishes.**

## **WHAT IS A WILL?**

A Will is your legal declaration specifying how and to whom you desire your property to be distributed at your death. A will may also name an individual to carry out the wishes expressed in the will and provide for the care of any minor children.

## **WHO NEEDS A WILL?**

Anyone who owns property and wants to designate its disposition should have a will; also anyone who has children should have a will.

## **WHAT HAPPENS IF A PERSON DIES WITHOUT A WILL?**

The legal term for dying without a will is intestacy. If you die intestate, your property will be distributed according to the laws of the state of your legal residence at the time of your death. In other words, if you do not write your own will, your home state has laws of intestate succession ready and waiting for you. The persons to whom the state wills your property might not be the ones you wish to have your property. In some cases, the state could leave your property to the state itself. Additionally, if you die without appointing a guardian for your minor children, the state can name someone to raise your children. In some cases, the state laws of intestate succession may coincide precisely with your wishes. Probate of an instate estate may cost your family more and take longer than if you have a will.

## **DOES A WILL DISPOSE OF ALL PROPERTY?**

Some property does not pass under a will, but is transferred to named beneficiaries under other provisions of law. Military death gratuities and any military pay and allowances owed but not paid before death will be transferred to the persons named on your DD Form 93, record of emergency Data. Life insurance proceeds will go to the beneficiaries you have designated in the life insurance policy. Certain property owned jointly by two or more persons with a specified right of survivorship automatically passes to the survivors in the instance of death. Often, real estate, bank accounts, IRAs, pensions, automobiles and savings bonds are held under such joint arrangements.

## **THE FOLLOWING CIRCUMSTANCES SHOULD BE CONSIDERED DURING ESTATE PLANNING:**

### **Real Estate**

\*Joint Ownership—If you own property as joint owners with right of survivorship, the property will go to the surviving owner as a matter of law.

\*Description of property—A will describes the property by clear means to identify it (address, registered plot, etc.).

\*Distribute by will—If the property is not distributed by law or by deed, distribute by will.

### **Contractual Assets**

\*Joint Ownership—If you own property as joint owners with right of survivorship, the property will go to the surviving owner as a matter of law.

\*Have you designated beneficiaries by contractual arrangement (life insurance, bank designation of beneficiaries, investment designations of beneficiaries)?

\*SGLI—Designate beneficiaries (outside your will) with your personnel office.

\*If none of the above, distribute by will

## **WHAT IS PROBATE?**

Probate is a court procedure through which an estate is passed. It is the procedure used to transfer a deceased person's property to those persons legally entitled to it. In Georgia, the probate proceeding will be brought in the county where the testator (deceased) resided at death. The length and expense of the proceeding will depend on the situation.

## **HOW TO MAKE A WILL:**

A will must be written in a manner that prevents any misunderstanding of your wishes. A will must be signed according to strict formal legal requirements. Your Air Force lawyer or civilian lawyer should be consulted in preparing a will, but there are some things you should do before seeing a lawyer:

(1) Determine just what you own and where it is located; and make an inventory of your property.

(2) Know the location of all important documents such as insurance policies, real estate documents, bank documents, birth and marriage certificates, and so on.

(3) Decide to whom your property will be distributed.

(4) If you have any minor children, name a guardian for them. Consider this matter very carefully, and ask the person to accept this responsibility before your will is prepared. Name an alternate guardian in case the person first named becomes ill, dies, or is otherwise disqualified. You may wish to create a trust to use your assets for the benefit of your children.

(5) Decide on a person to be your executor. This person must take your will to the proper court upon your death. This person pays your bills and gathers your estate for distribution.

## **WHERE SHOULD A WILL BE KEPT?**

Keep your will and an inventory of everything you own in a safe but accessible place. If you decide to use a bank safe deposit for this purpose, determine the bank's procedure for opening the box upon your death to retrieve the will. Let your executor know where your will is kept.

## **WHEN SHOULD A WILL BE CHANGED?**

Your will should be reviewed for change whenever the important circumstances in your life, or the lives of persons named in the will, change. These circumstances include changing your legal state of residence, getting married or divorced, death of a beneficiary, acquiring or losing a significant amount of property, and the birth of any child. The beneficiaries of your estate may be changed by you at any time or for any reason you desire by changing or rewriting it. A new will should be executed when the old one is lost, mutilated, or marked.

## **HOW IS A WILL CHANGED?**

This requires compliance with legal formalities, so a lawyer should be consulted. **CAUTION:** Never attempt to change your will by lining out parts of it or by writing in changes. The precise legal effect of such acts varies from state to state, but in many states, the entire will could become invalid.

## **DOES MY SPOUSE NEED A WILL?**

As said earlier, almost everyone who owns property should have a will. This includes spouses, especially since your spouse may end up owning the bulk of your property if you die first. If your spouse does not have a will, the state's intestate succession laws will take over.

# **LIVING WILL AND DURABLE MEDICAL POWER OF ATTORNEY**

The state of Georgia recognizes every Georgia resident as having the right to choose to make a living will and durable medical power of attorney providing instructions for certain difficult medical situations.

Both of these documents should be executed in compliance with the laws of your state of legal residence, rather than the laws of the state in which you are stationed.

The Georgia General Assembly has provided for these documents because of their recognition that a person with a terminal condition, in a coma, or in a persistent vegetative state may suffer the “loss of patient dignity and unnecessary pain and suffering” and that life prolonging procedures may not provide anything “medically necessary or beneficial to the patient.” Official Code of Georgia Section 31-32-1. Hopefully, neither you nor 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 and decrease the financial and emotional difficulties experienced by those you love.

## **Living Wills**

An advance medical directive or “living will” is separate from your will, but may be an important part of your estate plan. It is a document that allows you to make known your wishes as to whether life sustaining or death delaying procedures should be withheld or withdrawn in certain limited circumstances. A living will is effective in the event you suffer from one or more of the following specific conditions: a terminal illness; a coma with no reasonable expectation of recovery; or a persistent vegetative state with no reasonable expectation of regaining significant cognitive function. The living will speaks for itself. If a health care provider believes that you are unable to understand the general nature of the health care procedure that the provider deems necessary, he should follow the treatment wishes you expressed in your living will. The conditions that trigger your living will, and the extent of the medical care to be withdrawn, vary under State law. Your legal assistance attorney can help you decide which State’s forms to prepare. Once executed, the document is effective until you revoke it, which you may do at any time by physically destroying the document, or by revoking it in writing, or perhaps, in an emergency, by verbally revoking it before witnesses who can testify that you did in fact revoke it.

## **Special POA’s for Health**

Another important health care document is a special power of attorney for health care. You may execute this in addition to, or instead of a living will. It appoints someone you name to make medical care decisions for you if you cannot make your own medical decisions. It applies to more situations than the living will, which addresses only continued life support if you have a terminal condition. The power of attorney for medical care gives

the person your name as your agent the authority to make a wide range of medical decisions on your behalf. It authorizes another person to act on your behalf in matters relating to your personal care, medical treatment, hospitalization, and health care. Your agent can require, withhold or withdraw any type of medical treatment or procedure. It also gives your agent access to your medical information and authority to fully participate with your treating physicians in deciding the care to be provided to you. Obviously, the person you designate to be your agent should be someone you trust with life and death decisions. This person should also be some one that would be willing to stand up to the doctors to make sure that your wishes are followed. Like the living will, the power of attorney is usually drafted in accordance with the laws of the state where you reside. The Power of Attorney for Health Care is effective upon your disability, incapacity or incompetency.

### **Durable General Powers of Attorney**

While you are living, you have the right to decide what happens to your property as long as you are of sound mind. But if you become incapacitated, whether through illness or accident, and are unable to handle your own affairs, a court order may revoke your right to manage your own money/property and appoint a guardian or conservator. To protect you from this, you may appoint an agent through a power of attorney.

A power of attorney is your written authorization for someone to act on your behalf, for whatever purpose you designate. Ordinarily, a power of attorney expires if you become mentally disabled--the time when you need help the most. A **springing, durable** power of attorney can take effect when you **become** unable to manage your own personal and financial affairs and will last as long as you are alive or until you revoke it. As long as you are mentally competent, you can revoke a durable power of attorney whenever you like. Remember to name someone you trust as your attorney-in-fact. Your agent will have great authority over your affairs. Not only can they keep your affairs in order, but they have the potential to abuse this document at your expense and at his or her gain.

### **The Difference Between the Living Will and the Health Care Power of Attorney**

Your living will is going to trump your medical power of attorney unless you reside in a state that does not honor living wills. In a state that honor's living wills, no matter what your agent says, the healthcare provider must follow the terms of your living will, so long as you are in a vegetative state and/or have a terminal illness under the terms of the living will. Your living will is only going to address the issue of life-prolonging or life-ending procedures. If you have a health care power of attorney, your agent will handle all other healthcare decisions. If you live in a state that no longer honors living wills there is probably a different form that you need to fill out in order to make your wishes known. Georgia no longer recognizes living wills on or after July 1, 2007. However, if you executed a living will prior to that, Georgia courts will recognize it. In place of the living will and the medical power of attorney, Georgia as adopted an Advance Directive for Health Care. Under this advance directive for health care, an individual may appoint a medical agent, a guardian, should one be need, and may provide information as to life-prolonging and life-ending procedures. In essence, the Georgia Advance Direct for Health Care has combined the Medical Power of Attorney and the Living Will into one form. You legal assistance attorney will be able to assist you in preparing the documents necessary under the law of the state in which you reside.

## **Do Not Confuse a Living will and Power of Attorney with a DNR Order**

Living wills and health care powers of attorney are separate from a DNR order. A DNR Order tells medical professionals not to perform CPR. This means that doctors, nurses and emergency medical personnel will not attempt emergency CPR if the patient's breathing or heartbeat stops. DNR orders may be written for patients in a hospital, nursing home or for patients at home. A DNR order is only a decision about CPR and does not relate to any other treatment.

### **Issues Concerning Your Living Will and Power of Attorney for Healthcare**

- You may revoke a signed health care power of attorney and living will prior to your disability, incapacity or incompetency.
- Marriage may revoke a health care power of attorney that designates a person other than your new spouse as your health care agent.
- Divorce revokes your former spouse as your agent unless the health care power of attorney specifies otherwise.
- If you have moved here from another state, it is wise to have your documents reviewed by a Georgia lawyer to ensure that they comply with Georgia law.
- A health care power of attorney may be used to name a person who would be your guardian should a guardianship become necessary for you.
- A living will and a health care power of attorney do not allow your agent to make financial decisions or have the authority to control your finances. You would need a Financial Power of Attorney for any type of financial matters relating to your property.
- You may appoint more than one person to act as your agent.
- Keep your living will and your health care power of attorney in a safe place, just as you would your will.