

WILLS, LIVING WILLS, & TRUSTS



**Office of the Staff Judge
Advocate
Eielson AFB, Alaska**

354 FW/JA

**Legal Assistance & Preventive
Law
Pamphlet Series**

INTRODUCTION

There are two main advantages to taking care of your end-of-life decisions. First, you will be able to make better decisions now, when you are not under extreme pressure. Second, you'll save your friends and loved ones a great deal of stress by avoiding many of the administrative difficulties and decisions that must be made. This brochure will show you the basics of wills, living wills, and trusts. To create worksheets for wills and living wills, visit:

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

Utilizing this website will expedite the production of these documents at the Legal Office.

WILLS

The principal purpose of a will is to distribute your property after you die. You may split your estate up as many ways as you like, and make as many specific gifts as you see fit. You should keep in mind that all your property may NOT simply or automatically go to your spouse under state laws. You may, of course, have as many alternates as you like. If you die without a will, a court will distribute your assets by the law of the state. This may divide your estate in ways you may not foresee and would not appreciate, if you were alive.

Designating a guardian for your children is a must. If you are still married, your spouse will automatically have custody, but there remains the chance that you will both die in an accident. If you fail to designate a guardian, you risk a court placing them with someone inappropriate, or someone you would not choose for the task.

You should pick a personal representative (executor) that you can trust absolutely. Generally, your executor is responsible for ensuring the provisions of your will are fulfilled after your death. Most wills give very broad powers over your estate to your executor to allow them to oversee and manage the distribution of your assets in accordance with your wishes. Also be sure to designate one or two alternates, in case your first choice is not able to perform their duties as executor.

LIVING WILLS

A living will expresses your desire to be removed from life support if you are brain dead or in a permanent vegetative state and are unable to make that decision yourself. It is a legal document to the medical personnel that informs them to withhold lifesaving treatment and saves your family the burden of making that decision for you.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

A durable power of attorney for health care decisions is significantly different from a living will in that you need not be in a terminally ill or permanent vegetative state. Rather, you are unable to make certain medical decisions for yourself due to other circumstances including indefinite coma, unconsciousness, or anesthesia.

If there is no agent named under a durable power of attorney for health care decisions the medical personnel will make decisions for you based on a "reasonable person" standard. This means the medical staff would do for you what they consider most reasonable people would do if faced with the same situation. As you can see this leaves great room for them to act in ways

you may not want if you were conscious and able to make the decision for yourself.

STORAGE OF YOUR WILL

Your last will and testament should be kept in a safe, fireproof, and waterproof place to protect your documents from the environment. Your wills should not be stored in safe deposit boxes. Generally, safety deposit boxes are sealed upon the death of the owner and require the will be probated in court before it can be unsealed. You may elect to store your will in a fireproof box at your residence. Again, you need to ensure that the fireproof box is also waterproof. An inexpensive alternative is to store your will and any other important documents in a sealed bag or container in your freezer. In the event of a fire it is one of the last places to be damaged due to the construction of the refrigerator itself.

Making copies of your will is highly discouraged. Only the original is valid for submission to the probate court and copies can unnecessarily complicate the probate process. If you do decide to create a copy of your will, **do not remove the staples from the original.** Clearly mark every page of the copy as a copy and ensure that you keep track of the location of all copies to ensure they are destroyed the next time you update your will.

If and when you decide to update the contents of you will, please complete a will questionnaire on our legal assistance website at <https://aflegalassistance.law.af.mil>, then contact the legal office to set up an appointment. **Do not make any marks on your current will. This may invalidate**

your current will and you would be without one until you execute a new will.

It is highly recommended that your executor know where your current will is located and can access it in the event they need it.

This pamphlet is for basic information on wills, living wills, and durable powers of attorney for health care decisions. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for questions and further information.

