



MOUNTAIN POST LEGAL BRIEF

A Preventive Law Service of The Office of the Staff Judge
Advocate
Headquarters, Fort Carson
Keeping You Informed On Personal Legal Affairs



ESTATE PLANNING

Estate planning is for everyone. Consider these questions and answers to determine your estate planning needs.

Q: WHAT IS AN ESTATE?

A: An individual's "estate" is any interest the individual has in any personal or real property. This includes property owned solely by the individual or owned in common with another.

Q: WHAT IS PROBATE?

A: Probate is the process where property is distributed by the court owned by the person at the time of death. It can include real and personal property, life insurances that name the estate as beneficiary, pending lawsuits for money damages, debt owed to the deceased and trusts established under a will.

Q: HOW CAN I AVOID PROBATE?

A: Ultimately, taking as much property out of probate can help you potentially avoid the probate process altogether. This can include designating a POD (payable on death designation) through your bank for your checking and savings accounts; executing a beneficiary deed for your real property; and designating beneficiaries for your life insurance policies and investments.

Q: WHAT IS THE LEGAL SIGNIFICANCE OF A DISPOSITION OF LAST REMAINS?

A: The person you designate to dispose of your remains will be responsible for the disposition. Although a DD 93, block 13, allows you to designate a person to do this, some states do not honor the DD 93. These states include the following: California; Connecticut; District of Columbia; Kentucky; Louisiana; Maine; Massachusetts; Michigan; Minnesota; Nebraska; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; South Dakota; Vermont; and Washington.

Q: WHAT IS A LAST WILL AND TESTAMENT?

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.

Q: CAN MY LAST WILL AND TESTAMENT BE CHANGED?

A: Yes. Changes to a will are made by drafting a new will and destroying the old one, or by adding a "Codicil." A Codicil is a legal document that must be signed and executed in the same manner as your will. NEVER MAKE ANY CHANGES TO YOUR WILL without consulting an attorney. Changes on the face of your original may make it invalid.

Q: IS A LIFE INSURANCE PROGRAM A SUBSTITUTE FOR A WILL?

A. No. Life insurance is only one kind of property which a person may own. If a life insurance policy is payable to an individual, the will of the insured has no effect on the proceeds. If the policy is payable to the estate of the insured, the payment of the proceeds may be directed by a will. The careful person will have a lawyer and a life insurance counselor work together on a life insurance program, as one important aspect of estate planning.

Q: IS MY LEGAL RESIDENCE IMPORTANT WITH REGARD TO MY WILL?

A: Yes. Your legal residence affects where your will is probated and the amount of state inheritance or estate tax that may be paid at death. It is best to draft the will according to the state laws where you hold real property. Fort Carson's legal assistance office can draft wills from all states with the exception of Puerto Rico and Louisiana.

Q: MAY A PERSON DISPOSE OF HIS PROPERTY IN ANY WAY?

A: Almost, but not quite. For example, in most states, a married person cannot completely “disinherit” or exclude a spouse. Generally, you are free to give your property to whomever you desire. However, most states have laws that entitle spouses to at least part of the other spouse’s estate. This “statutory share” ranges generally from 1/3 to 1/2 of the other spouse’s estate. Some states, such as Louisiana, also provide shares of the estate to children of the decedent. Other provisions of the law may control insurance proceeds and jointly owned property. If you have questions concerning the statutory share law in your home state, you should ask a Fort Carson legal assistance attorney.

Q: WHAT HAPPENS TO PROPERTY HELD IN THE NAMES OF BOTH HUSBAND AND WIFE?

A. Joint bank accounts and real property held in the names of both husband and wife usually pass to the survivor by law and not by the terms of the deceased’s will. There are many cases, however, in which it is not to your advantage to hold property in this manner.

Q: SHOULD I NAME A GUARDIAN FOR MY CHILDREN IN MY WILL?

A: It is advisable. Usually the surviving spouse is designated as the guardian of any minor children. By so naming the spouse in the will, you can sometimes relieve him or her of any requirement to post bond through a court. You should also name a substitute guardian. This would provide for a guardian for your children in the event that your spouse dies before you or you and your spouse die at the same time.

Q: WHAT IS AN EXECUTOR?

A: An executor (executrix, if female) is the person who will manage and settle your estate according to the will. You should also consider naming a substitute executor in the event that the named executor is unable or unwilling to act as the executor of your estate. By the wording of 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. The choice is yours.

Q: HOW LONG IS A WILL VALID?

A: A properly drawn and executed will remains valid until it is changed or revoked. However, changes in circumstances after you execute your will, such as tax laws, marriage/divorce, birth of children or even a substantial change in the nature or amount of your estate, can affect whether your will is still adequate or whether your property will still pass in the manner you chose. All changes in circumstances require a careful analysis and reconsideration of the provisions of a will and may make it wise to change the will, with the help of your legal assistance officer.

Q: HOW LARGE AN ESTATE IS NECESSARY TO JUSTIFY A WILL?

A: Everyone who owns any real or personal property should have a will regardless of the present amount of his estate. Your estate grows daily in value through the repayment of mortgages, appreciation of real estate, stocks and other securities, inheritances from relatives, and other factors.

Q: WHAT HAPPENS IF I DON’T MAKE A WILL?

A: When you die without a will (or die “intestate,” as the law calls it) your property is distributed according to a formula fixed by law. In other words, if you don’t make a will, you don’t have any say as to how your property will be divided. Usually a person would prefer that all of his estate, if it is not large, go to the surviving spouse. 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 should specify the individual, as well as an alternate, you would like to designate as the guardian of your children. This decision on your part will be of great assistance to the court in determining who will receive the custody of your children.

Consultation with Army attorneys is free to eligible clients. If you have questions or need help with legal problems, call the Fort Carson Legal Assistance Office at 526-5572/5573 or come by the office (Building 6222) Monday-Friday from 9 a.m. to 4 p.m. Appointments are made on the last duty day of every week; you can call or walk-in to schedule an appointment.

MOUNTAIN POST LEGAL BRIEF is one of a series of informative handouts from the Fort Carson Legal Assistance Division containing general information on topics that legal assistance attorneys frequently advise on. Information provided is general in nature and does not constitute legal advice. Consult an attorney for specific legal advice for your particular situation. You may schedule a legal assistance appointment by calling the Legal Assistance Division at 719-526-5572.