



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

DO I NEED A WILL?

Consider these questions and answers to help you decide whether you need a will.

Q: WHAT IS A LAST WILL AND TESTAMENT?

A: 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 can be made by drafting a new will which would revoke all previous wills. **NEVER MAKE ANY CHANGES TO YOUR WILL** by writing on the will because written changes could invalidate the will. Consult with an attorney to discuss the changes you wish to make to your will.

Q: WHAT IS MY LEGAL RESIDENCE?

A: 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.

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 due upon death.

Q: WHAT IS MY ESTATE?

A: Your estate consists of all of your property and personal belongings you own or are entitled to possess at the time of your death. This includes real and personal property, cash, savings and checking accounts, stocks, bonds, real estate, automobiles, etc. 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 of an insurance policy, although part of your estate for tax purposes, will normally pass to the primary or secondary beneficiary designated on the face of the respective policy.

Q: TO WHOM SHOULD I LEAVE MY ESTATE?

A: A person who receives property through a will is a "Beneficiary." You may leave all of your property to one beneficiary, or you may divide your estate among several persons. You may designate in your will that several different items of property or sums of money shall go to different persons. In any event, you should decide on at least two 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 die before you.

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

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

A: Almost, but not completely. 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: 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/PERSONAL REPRESENTATIVE?

A: An executor or personal representative is the person you appointed to manage and settle your estate according to your will. The title of this person depends upon state law. You should also consider naming a substitute executor/ personal representative in the event the named party is unable, unavailable or unwilling to act as the executor/personal representative of your estate.

Q: WHAT IF I STILL HAVE QUESTIONS REGARDING MY WILL?

A: Ask them while your legal assistance officer is preparing your will. Be sure that you convey accurately your wishes for the distribution of your property to him or her.

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 a 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: If 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 when there is 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.

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 some cases, however, in which it is not to your advantage to hold property in this manner.

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.