

WILL INFORMATION PAMPHLET

To have a military Legal Assistance Office prepare your actual will you will need to get a copy of the estate planning questionnaire, fill out the form, and return the form to the nearest military Legal Assistance Office. The estate planning questionnaire is posted on our legal assistance web page. Another document posted on our legal assistance web page that may be useful in your estate planning is the letter of instruction. The letter of instruction educates your estate executor or executrix about your personal financial affairs, so the probate process can be easier for your executor or executrix, family, friends, and loved ones. This information sheet is intended to explain some of the terms and questions used in those documents.

I. ABOUT THE WILL QUESTIONNAIRE The Will Questionnaire is to help us speed up and simplify the process of preparing a will for you. In this cover letter we try to answer some common questions.

II. DO YOU NEED A WILL? If you don't have a will, most states presume that you want your estate to go to your next of kin. Your next of kin is usually defined as your spouse. Therefore, all of your possessions would go to your spouse if you died without a valid will. If you are not married, then your estate would go to your children. If you had no children, then your parents, followed by your brothers and sisters, aunts and uncles, cousins, etc would follow as beneficiaries. Finally, if you have no living relatives your estate goes to the state. If you don't want your estate to be inherited in this progression, then you should have a will. Also, if you have children it is a good idea to designate a Guardian (the person who will look after your children if you and the other parent die). If you have specific gifts, this should also be stated in a will. Finally, having a valid will shortens the time required to settle the estate and generally costs less than the fees for state involvement.

III. SIMPLE WILLS ONLY!! The Legal Assistance Office prepares only simple wills and wills that have testamentary trusts for the benefit of children. If you have an estate worth over \$3,500,000 (including life insurance benefits), then you should contact an attorney who specializes in estate planning. There are substantial federal gift and estate taxes on estates over \$3,500,000. A qualified attorney may be able to set up simple trusts and other devices to protect your assets so that your heirs, and not your uncle (Sam) inherit your estate. Please feel free to discuss your options with a Legal Assistance Officer.

IV. WHAT ABOUT LIFE INSURANCE PROCEEDS? (See Question 4b.) Life insurance proceeds are usually not passed through your will, however, as stated above, they are usually taxed as part of your estate. Life insurance beneficiaries are listed on the policy (or on your Page Two in the case of SGLI) and are not effected by the will. One exception is when there is no beneficiary listed on the life insurance policy, only then does the will determine who gets the money.

V. WHAT ABOUT SPECIAL GIFTS? (See Question 5) A Special Gift (also known as a Specific Bequest) is a gift of a particular item to a certain person, charity, or corporation. For example, "I leave my blue, fur pajamas with the fire engines on them to my cousin Timothy Greene of Nashville, Tennessee." If you have some specific bequests list them in Question 5. Please make this list brief by confining it to important (ie., valuable) items. If you have a more extensive list of

gifts, it is more practical to list these gifts in your Letter of Instruction (which we have attached as enclosure (2)). Be sure you describe the item with as much specificity as possible. If you have any specific desires upon your death (e.g. to be cremated, to be buried at sea, etc.) those should be stated in Question 5.

VI. WHAT IS A BENEFICIARY? (See Question 6.) A beneficiary is the person or persons who will inherit your estate when you die. The First Beneficiary (or Beneficiaries) will receive everything. The Second Beneficiary gets nothing unless all the people listed as First Beneficiaries die before you do. Usually, your spouse is listed as the First Beneficiary and your children are listed as your Second Beneficiaries. The same formula applies to Third Beneficiaries (ie, they receive nothing unless all those listed as Second Beneficiaries pre-decease you).

VII. PER STIRPES VS. PER CAPITA? (See Question 7) There are two ways to leave your estate to your children; Per Stirpes and Per Capita. For example, if you are not survived by your spouse but you are survived by two children (named Alfa and Bravo), then Alfa and Bravo would each get 50% of your estate. Suppose Alfa died before you and left a child (named Alfa, Jr.). Where should Alfa's 50% of your estate go? To Bravo, or to Alfa, Jr.? If you want Alfa's share to be inherited by Alfa's children then the share passes per stirpes (think of it as "down the stripe"). If you want Bravo to get the entire estate (thus shutting out Alfa's children), then the estate passes per capita. Per Capita distribution looks at the number of surviving heads (capitas) on the generational line. Please indicate whether you desire Per Stirpes or Per Capita distribution on Question 7. Feel free to discuss with the Legal Assistance Attorney the benefits of each scheme. If you do not indicate either, then we will assume you intend Per Stirpes distribution (as this is most common).

VIII. WHAT IS AN EXECUTOR? (See Question 11.) An Executor is the person who will see that your estate is distributed according to the will. Because this person will often be required to file in your local Probate Court, it is preferable that the Executor live in or near the state where the bulk of your property is located. Your executor receives a fee for his services out of the proceeds of the estate and may use this fee to hire someone else (like a probate attorney) to meet the Probate Court's requirements. Your parent(s) may not be the best choice due to their age. You should make sure the proposed Executor is willing to accept this responsibility.

IX. WHAT TO DO ABOUT MY MINOR CHILDREN? There are two issues you should be concerned about if you die and your children are still minors -- (1) who will raise them, and (2) who will handle the property (or money) they inherit. (a.) Appointing a Trustee (Question 9 & 10): If your children are minors, they are not able to have control over any money they inherit until they reach the age of majority (18) or any age that you deem appropriate. Until that time either the Guardian will handle their money for them, or a Trustee will handle the money for the children's benefit. In the case where the Guardian and Trustee are separate people, the Guardian must request permission from the Trustee to get money for the children. Your parent(s) may not be the best choice due to their age. You should make sure the proposed trustee is willing to accept this responsibility. (b.) Appointing a Guardian (Question 12): The person you designate to raise your children should you and the children's other parent die, is called the Guardian (see Question 12). This person should be the person who will best take care of your children, as opposed to the person who is the wealthiest. In most cases, your life insurance will provide enough money to take care of your children. Your parent(s) [the child's/children's grandparent(s)] may not be the best choice due

to their age. You should make sure the proposed Guardian is willing to accept this responsibility.

(c.) Guardian of Person and Property for Minor Children by a Former Marriage (Question 12B): Generally, the surviving natural parent will be determined to be the Guardian of his or her children unless there is a good reason to deny that parent Guardianship. You may designate another person to be Guardian of your children by a former marriage in the event that the surviving natural parent is unfit or unable to be Guardian.

X. WHAT IS A LIVING WILL? (See Question 13A.) A Living Will expresses your desire not to be kept alive on life support or by intravenous feeding if you are suffering from a terminal illness or injury (dying), unlikely to lead a meaningful life again, and are unable to speak for yourself. Without a Living Will, medical treatment generally cannot be terminated. (Ask a Legal Assistance Officer for Living Will handout if you have more questions.)

XI. WHAT IS THE LETTER OF INSTRUCTION? (Enclosure (2)).

A Letter of Instruction is not legally binding, but tells your heirs what your intent is. Generally, items of sentimental value are listed on this document. Also, it helps your Executor locate your assets and debts so that he or she does not have to go on a treasure hunt when you die. The Letter of Instruction should be kept with the will so that your Executor will find it. A Letter of Instruction is available on our website at <http://www.uscg.mil/legal/la>.

XII. THINGS YOU SHOULD THINK ABOUT?

Procedures: After filling out the Will Questionnaire, please mail or fax the Questionnaire to the D1 Legal Office or schedule an appointment to review the Questionnaire with one of our attorneys.

After the will review, the Legal Assistance Office will type a will and the related documents for you to sign (this usually takes about two weeks). When we have prepared the will and related

documents, we will call you to schedule an appointment to sign the will.(b.) Where to Keep the

Will: Do not keep your will, living will or related powers of attorney in a safe deposit box. When

you die, your bank will seal the safe deposit box and your Executor will need the will to get into the safe deposit box. Keep the will and related documents that we prepare in a fire-proof box or cabinet

and let your Executors know where it is. Also, let the Executors know where your valuables are

located. The Letter of Instruction is intended to do that. (c.) Don't Make Photocopies: We

recommend that you not make photocopies of these documents. Photocopies are not valid for any

legitimate purpose (as they are not admissible in court). If you decide to destroy your will and make

a new one, it becomes more difficult if there are photocopies floating around. (d.) What to do with

Old Wills? You should physically destroy any old wills. Putting a line through an old will does not

destroy it. Do not make pen and ink or other changes to a will. To amend a will you must make a

new will or codicil (an attachment) and they must be signed in front of two witnesses. (e.)

Documents on File: Birth and marriage certificates should be obtained as part of estate planning.

XI. EXPRESS YOUR INTENT: Your will should reflect your wishes on how your property is to be distributed when you die. No one else should make these very personal decisions for you. If you believe that someone is trying to influence you, you should speak to your Legal Assistance Attorney about it.