

## Introduction

An estate is settled during a process called probate. If you don't have a will, your estate does not automatically go to the state. Rather it follows a statutory formula called Intestate Succession. Each state has its own statutes regarding intestate succession, however it is typically distributed to your spouse first. If you are not married, then your estate would go to your children and if you have no children, then your parents, followed by your brothers and sisters, aunts and uncles, cousins, etc. Finally, if you have no living relatives, your estate passes, or escheats 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 intestate succession.

The Legal Assistance Office prepares only simple wills. If you have an estate worth over \$1,500,000 (*including* life insurance benefits), then you should contact an attorney who specializes in estate planning in your state. There are substantial federal gift and estate taxes on estates over \$5,490,000. Furthermore, state estate taxes may be owed for estates with much lower values depending on the individual state of residency of the deceased. 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.

The legal office will ask you to fill out a will worksheet in order to draft your will. Please disclose as much information as possible to assist your attorney.

Married couples will be asked to see two different attorneys, or sign a dual representation agreement.

## OTHER RESOURCES

- **Will Worksheets/Legal Assistance Web Site**

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

- **American Bar Association Guide to Wills and Estates**

[http://www.americanbar.org/groups/public\\_education/publications/books\\_related\\_products/law\\_materials\\_for\\_consumers.html](http://www.americanbar.org/groups/public_education/publications/books_related_products/law_materials_for_consumers.html)

- **AFI 51-504, Legal Assistance, Notary and Preventative Law Programs**

**Legal Assistance Hours:**  
By Appointment Only

**Will Executions:**  
Friday 10:30-11:00



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# WILLS

## This Brochure Includes:

- What is a Beneficiary?
- What is an Executor?
- Per Stirpes v. Per Capita
- Minor Children
- Special Gifts
- Life Insurance Proceeds
- Other Resources



## What is a Beneficiary?

A beneficiary is the person(s) 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.

Almost every jurisdiction has what is called a "Marital Share," which allows a surviving spouse to claim a portion of the estate despite a valid will attempting to disinherit a spouse. This includes persons separated pending divorce.

## Per Stirpes v. Per Capita

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 in the beneficiary designation area. 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).

## What is an Executor?

An Executor (or Personal Representative) 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. The 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 executor does not have to be a relative. 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. An Executor will be held under a fiduciary duty in distributing your estate.

## 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** 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. A trustee will be held to a fiduciary duty.

**(b.) Appointing a Guardian** The person you designate to raise your children should you and the children's other parent die, is called the Guardian. 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. A Guardian will be held to a fiduciary duty.

**(c.) Guardian of Person and Property for Minor Children by a Former Marriage** 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. A court will look at the best interests of the children.

## Special Gifts

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 to my cousin Timothy Greene of Nashville, Tennessee." If you have some specific bequests, list them in the Beneficiary Designation section. Please make this list brief by confining it to important (ie.,valuable) items. If you have a more extensive list of gifts, sometimes it is more practical to list these gifts in a separate document that can be executed at the same time as the will if your state law allows for this procedure. Be sure you describe the item with as much specificity as possible.

## Life Insurance Proceeds

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.

## Other Helpful Hints

- Keep wills and related documents in a fire-safe place and let your executor know where they are kept
- Do not make copies of current wills
- Physically destroy old wills
- Birth and Marriage Certificates should be obtained as part of your estate planning
- We recommend updating your will once a year or when a significant life event occurs