



Wills Overview



Will Appointment Process

If you need a will, call 456-2561/2562 or stop by the legal office to make an appointment. You will be e-mailed a link to the Air Force Legal Assistance Website and asked to fill out a will worksheet. When complete, you will receive a ticket number; call 318-456-2562 with the ticket number to schedule your appointment. The whole process takes about an hour, so please be sure to allocate sufficient time. It is generally recommended that you should not bring children because they cannot be left unattended and we do not offer child care services. The topics discussed also may not be appropriate for children (e.g., their parents' death).

Creating A Will

The legal requirements for drafting a valid will are not nearly as complicated as many people fear. There are just a few simple rules.

Age: To make a will, the “testator” (the person making the will) must be either: at least 18 years of age unless from one of the few states that permits younger persons to make a will if they are married, or otherwise considered “emancipated.”

Mental State: The testator must be of “sound mind” to make a will. This is not a rigorous standard. Normally it means that he or she: (1) knows what a will is and that he or she is making one; (2) understands the relationship between himself or herself and those persons for whom he or she would normally provide, such as a spouse or children; (3) understands what he or she owns; and (4) is able to decide how to distribute his or her property. In reality, a testator must have a fairly diminished mental capacity before a court will rule that he or she lacked the mental state to make a valid will. It is also important to remember that in most cases, there is no need to prove mental state to a court. It is presumed that the testator was of sound mind and the issue will never arise unless someone challenges it in a court proceeding.

A will can also be declared invalid if a court determines that it was procured by “fraud,” “duress,” or “undue influence.” This usually involves manipulation of a vulnerable testator by someone who has a stake in the will.

How the Will Should Appear: The will must expressly state that it is yours and that it is a will. It must have at least one substantive provision, such as a clause that leaves some or all of your property to someone. However, a will that only appoints a personal guardian for your minor children and doesn't dispose of any property is also valid.

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You must also appoint an executor. This person (called a “personal representative” in some states) is responsible for supervising the distribution of your property after your death and seeing that your debts and taxes are paid. However, in most states, the probate court will appoint an executor if you fail to name one. An important consideration is that your will should usually grant your executor the power to independently administer your estate. What this means is that the executor will have the right to take all the actions required and authorized by law without having to get a Court order for every action.

Witnesses: You must date and sign the will in the presence of at least two witnesses. The witnesses cannot be named to receive property in your will. The witnesses must watch you sign your will and then must sign it themselves.

Notarization: Wills do not have to be notarized to be valid. However, in most states you may want your witnesses to sign a short document called a “self-proving” affidavit before a notary public. Doing so makes the probate process easier because your witnesses won’t have to come to court after your death to swear that the will is valid.

Common Will Provisions: Most wills contain provisions that:

- Revoke all prior wills;
- Direct the payment of medical and funeral expenses from the estate;
- Distribute property through a residuary clause (all my property) or a specific bequest (an individual item of property);
- Appoint and grant specific powers to an executor or personal representative;
- Appoint and grant specific powers to a guardian for any minor children;
- Specify any special funeral arrangements, such as cremation or military honors; and
- If applicable, state that you have served in the Armed Forces and direct your executor to inquire whether your family may be entitled to benefits.

After Your Will Is Executed

Where to Keep Your Will: A will does not need to be filed with any court or government agency. However, you may record the fact that you have a will and the date it was created, so that you are protected from tampering with your will. Your will however, need to be kept somewhere safe and that your executor can find it easily. Additionally, you need to make sure that your executor will be able to have access to your will. For example, if it is kept at a bank, you need to put your executor’s name on file with the bank as someone who has access. Your will does not become enforceable until your death.

Revoking Your Will: You can change your will at any time. You should change your will when there are major changes in your life, such as marriage, divorce, the birth of children, or receipt of a valuable piece of property. ***Once signed, the terms of a will cannot be changed by writing something in or crossing something out.*** It is possible that any writing on the will

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Other than the signatures may invalidate the will and render it unenforceable. To revoke a prior will you should physically destroy it, but a will can also be revoked by a subsequent will that declares that all prior wills are revoked.

What to Do if You Move: Generally, a will is valid in any state where you die, if it was valid under the laws of the state (or country) where you were “domiciled” when the will was made. Your domicile is the state where you have your principal home. You can have only one domicile. If you move to another state after signing your will, you should review your will in light of the new state’s laws, especially property ownership laws that apply to married couples.

What Does an Executor Do?

The executor’s primary job is to protect the deceased person’s property until all debts and taxes have been paid and then distribute the remainder to the people who are entitled to it. Generally, you can name anyone you want to be your executor, although you normally cannot appoint a minor, a convicted felon, or someone who is not a U.S. citizen. Some states impose restrictions on naming an out-of-state executor, so it is always better to name someone who lives nearby.

No one can be forced to serve as an executor and anyone who has agreed to serve can later resign. For this reason your will should name an alternate executor who can take over if necessary. If no one is available, a court will appoint someone.

Executors have a number of duties, depending on the complexity of the deceased person’s estate. Typically, an executor must:

- Decide whether or not probate court proceedings are needed. Probate in Louisiana refers only to the legal process in which a will is reviewed to determine whether it is valid and authentic. See our handout on Wills Probate and Succession in Louisiana for more information. If the deceased person’s property is worth less than a certain amount (it depends on state law), formal probate may not be required.
- Determine who inherits property. If the deceased person left a will, the executor will read it to determine who gets what. If there’s no will, the administrator will have to look at state law (called “intestate succession” statutes) to find out who the deceased person’s heirs are.
- Identify, collect, and manage the deceased person’s assets during the probate process. This may include terminating leases and credit cards, notifying banks and government agencies – such as Social Security, the Post Office, Medicare and the Veterans
- Administration – of the death, and paying continuing expenses and debts, such as mortgage payments, utility bills, homeowner’s insurance premiums, and taxes.

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Will Terminology

- Alternate Beneficiary: persons who receive your property under the will if the Primary Beneficiary dies before you.
- Executor (Personal Representative): the person(s) or other entity (trust company, bank or law firm) responsible for gathering your assets, filing your will in probate court, paying your estate's debts, and distributing your property according to your will.
- Guardian: the person(s) appointed to care for your minor children if both you and your spouse should die. Children under 18 are considered minors.
- Per Stirpes: if you leave property to one of your children and that child predeceases you, this provision allows their children (your grandchildren) to inherit their deceased parent's share.
- Primary Beneficiaries: persons named in the will who inherit your property.
- Testator/Testatrix: the person making the will.

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