

LEGAL AID'S "WILLS FOR HEROES" PRO BONO EVENT

FREQUENTLY ASKED QUESTIONS (FAQs)

This FAQs sheet is published for informational purposes only. The information contained in this FAQs sheet is not intended to serve as legal or tax advice and one should not act upon such information without seeking professional counsel. Pursuant to Internal Revenue Service Circular 230, if there is any tax advice contained herein, it is not intended to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

Q: What service is included in the "Wills for Heroes" pro bono clinic?

A: The clinic is designed to provide a basic will, living will, and power of attorney to "Heroes" in our community and their spouses, in order to assist them with their estate planning affairs in an effort to protect them and their families. The clinic is not designed to handle complex distribution provisions or drafting for estate planning matters such as special needs trusts for disabled family members, out-of-state real estate, advanced tax planning, incorporation of pre-marital agreements in the plan, pet trusts, etc.

Q: What do I do if I am single with no children and want to leave my property to a person(s) or to charity?

A: On the *Family Information* form you receive prior to the drafting of your documents, please complete the name of the person or charity that you want to leave your property to in the 1st Child, 2nd Child, 3rd Child, etc. blanks. Note: Distributions will be made in equal shares to the person(s) and/or charity named in these blanks.

Q: Why should I have a Will, Living Will, and Durable Power of Attorney?

A: By executing these documents you are taking control of how your property and health care decisions are made in the event of your disability or death. Without these documents the Florida State Statutes will determine how your property passes at your death, and the court will appoint people to act on your behalf with regard to your matters, rather than you choosing who you want to handle your matters.

Q: Does having a Will avoid probate?

A: No. Probate is the legal process by which your final debts are paid, creditors are notified, and your property is collected and distributed when you die. Your Will just gives you control over who handles this process for you and to whom your property gets distributed.

Q: What happens to my retirement benefits and life insurance when I die?

A: Typically your retirement benefits and life insurance pass directly to whomever you have designated as the beneficiary. Unless you name your estate as the beneficiary or the beneficiary you've designated dies before you do, these benefits will pass directly to the beneficiaries you have designated without going through probate and your Will.

Q: What happens to property that I own jointly with other people?

A: If you own property with another person(s) titled joint with right of survivorship (JTWROS) or with your spouse "as husband and wife" tenants by the entirety (TBE) here in Florida, then this property passes directly to the other person(s) named in the title without going through probate and your Will.

Q: What happens to my primary personal residence when I die if I am married and/or have minor children?

A: In Florida, if you own your home (primary personal residence) your spouse and/or minor children have a vested right in your primary personal residence when you die. This is known as a *Homestead* right. This means you cannot leave your primary personal residence to anyone other than your spouse and/or minor children. While your spouse can agree to give up their Homestead right, no one can give up this right on behalf of a minor child. This is an important estate planning concept, especially in a second marriage.

LEGAL AID'S "WILLS FOR HEROES" PRO BONO EVENT

FREQUENTLY ASKED QUESTIONS (FAQs)

This FAQs sheet is published for informational purposes only. The information contained in this FAQs sheet is not intended to serve as legal or tax advice and one should not act upon such information without seeking professional counsel. Pursuant to Internal Revenue Service Circular 230, if there is any tax advice contained herein, it is not intended to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

Related Estate Planning Terms & Definitions for the Non-Attorney Layperson

Q: What is a Will/Last Will and Testament?

A: A Will is a set of instructions of how to dispose of your property after your death. It names a Personal Representative/Executor to carry out your instructions. If you have minor children, it names a Guardian(s) to care for them in your absence until they attain age of majority. Note: Any non-relative named as Personal Representative/Executor must be a Florida resident.

Q: What is a Memorandum Distributing Personal Property?

A: Tangible personal property (e.g. clothing, jewelry, art, china, crystal, household goods, stamp collections, etc.), unless it is of very substantial value, tends to be distributed without formal probate proceedings. *Tangible Personal Property does not include cash, stock, or bond certificates.* In Florida, you can complete a separate Memorandum Distributing Tangible Personal Property incorporated by reference into your Last Will and Testament to handle the disposition of these items. This separate Memorandum can be changed without a witness or notary, and the most recent signed and dated version kept with your Last Will and Testament.

Q: What is a Living Will/Advance Medical Directive?

A: A Living Will/Advance Medical Directive states your preferences regarding end-of-life care if you are terminally ill or in a persistent vegetative state (like a coma). For instance, if you are terminally ill and two doctors agree you will not recover, this document tells the doctors and your Health Care Surrogate if you wish to be hooked up to a ventilator, have a feeding tube, receive pain medication, or be permitted to die a natural death with no heroic measures being taken other than to provide you with comfort care.

Q: What is a Health Care Surrogate?

A: A Health Care Surrogate is a person you name to make decisions for you regarding your health care when you are unable to give informed consent to medical care or procedures on your own. If you have a Living Will/Advance Medical Directive, the Health Care Surrogate and doctors will follow your directions under those specific circumstances outlined in that document.

Q: What is a Durable Power of Attorney?

A: The term "Durable" means that the power continues in the event of your disability. A Power of Attorney allows you to name an Agent/Attorney-in-Fact to act on your behalf with regard to your property and finances. This power ends at your death or if you revoke it. For single individuals, this is especially important since often no one else is named on your financial accounts or real estate, and in the event of your disability without a Durable Power of Attorney, a court would have to appoint someone to act on your behalf and report to the court on a regular basis to make expenditures on your behalf (such as paying your bills, buying food or clothing for you, etc.)