



UNCLASSIFIED



Estate Planning Brief

19 Dec 2024

This presentation is informational only. This brief is not legal advice and does not create an attorney-client relationship.

Brief Prepared By: Yuma Legal Assistance Office

Highest Classification: Unclassified

Point of Contact:

DSN: 928-269-2481

UNCLASSIFIED



Overview



- Advance Medical Directives
 - Health Care Powers of Attorney
 - Living Wills
- Financial/Property Powers of Attorney
 - General Powers of Attorney
 - Springing
 - Non-Springing (or Immediate)
 - Special Powers of Attorney
- Probate
 - Wills
- Living Trusts



Caveats



- No one can order you to create any of these documents.
 - These documents are meant to memorialize your own personal, informed legal decisions that are made freely and without undue influence.
 - They are invalid if done involuntarily.
- You are the custodian of your own documents.
 - No one in the military keeps copies of these documents. My office does not keep copies of these documents.
 - When consulting with you individually about estate planning, your conversation with me is an attorney-client communication and privileged.



Advance Medical Directive

- A Health Care Power of Attorney allows you to nominate an “agent” (a trusted adult) to make health care decisions for you if you are still living but cannot make those decisions for yourself because of a serious illness or injury
- A Living Will allows you to make, in advance, certain decisions about your health care when incapacitated by specifically telling your doctors or agent what to do.
- The Arizona Attorney General and the Veterans Administration offer advance medical directive forms.
 - <https://www.azag.gov/seniors/life-care-planning>
 - <https://www.va.gov/find-forms/about-form-10-0137/>



UNCLASSIFIED

Power of Attorney Overview



<https://www.jag.navy.mil/legal-services/special-power-of-attorney/>



Financial/Property: Special Power of Attorney



- Special Power of Attorney: limited authority over specific property or specific types of property
 - Minimizes risk and accomplishes your intent
 - Most often make sense in deployment contexts

- A Special Power of Attorney is a legal document in which you (the “principal”) grant someone else (the “agent”) the legal authority to act on your behalf in a specific area: to buy or sell something; to file taxes, lease real property, etc:
 - Special powers of attorney are more likely to be honored by businesses and creditors. They are generally required for financial and real estate issues.



Financial/Property: General Power of Attorney

- General Power of Attorney: unlimited authority over property and finances
 - Very risky and may be unnecessary
 - Some institutions may not even accept
 - Most often needed in context of estate planning

- Springing or Non-Springing: General powers of attorney are either springing or non-springing.
 - If *Springing*: The power “springs” into effect on a future date or future contingency, usually your incapacity.
 - If *Non-Springing (or Immediate)*: The power is effective immediately upon your signature on the document.



Probate



- Probate is the judicial process that retitles assets after your death according to state law.
- The probate judge must appoint an "executor" or "personal representative" to take control of the assets, identify and pay off the debts, and distribute the remaining assets to the beneficiaries.
- The probate process happens whether there is a will or not.



Probate If There Is No Will

- Executor or Personal Representative: A judge appoints an executor or personal representative to take control of the property and distribute it to the heirs.
 - If more than one person applies to be executor, the judge will have to choose the most suitable person.

- Distribution of your assets: Once court-approved, the executor pays the debts and distributes the remainder according to the state's "intestacy" laws.
 - The surviving spouse of deceased person will normally inherit.
 - If the deceased person has no surviving spouse, the decedent's surviving children will inherit in equal shares.
 - If the deceased person has no surviving spouse or children, the decedent's parents will inherit in equal shares.



Probate If There Is a Will

- A will overrides the state's intestacy law and tells the judge how to distribute your estate upon your death.
- A will tells the probate judge who you want to be your “executor” or “personal representative” who will distribute your estate.
- A will can provide certainty and clarity so that your relatives don't dispute who should be "executor."
- Also, if you have children who are younger than 18, a will can nominate guardians for them and their assets in the event both parents pass away.



What Is Your Estate?

- Your "estate" is any property (land, money, stocks, vehicles, tangible personal property, etc) that is titled in your name after your death.
- Your "estate" does not include property titled with a right of survivorship, a transfer-on-death clause, or a pay-on-death clause. Any property titled jointly with “right of survivorship” (“and/or”) will automatically be owned by survivor or contingent beneficiaries.
- Residential real estate, vehicles, and bank accounts are often titled this way, particularly when owned by married couples.
- The probate process also does not affect assets that are titled in a living trust.



Living Trusts

- A *living trust* is a legal arrangement that an individual (the grantor) establishes while alive to protect assets and direct their distribution after the grantor's death.
- Assets in a living trust avoid the probate process after the grantor's death, because the assets are titled in the name of the trust rather than the granter.
 - Done properly, the distribution of assets after death can occur smoothly, quickly, and without court costs.
- In the event that you become incapacitated and can't manage the trust's assets yourself, your successor trustee (and not the courts) will manage them on your behalf.
- Designing and drafting living trusts requires more qualified legal expertise than military legal assistance offices have.



Office Procedure for Wills

- You and/or your spouse can request the Legal Assistance Office to draft a simple will for you at no cost. You will be required to complete:
 - a Client Intake sheet and Statement of Understanding
 - a Dual Representation Waiver (if seeking mirror will with spouse)
 - a Will Worksheet
- Likely require at least two appointments to complete.
 - Consultation, during which you meet with a legal assistance attorney to make sure all your questions are answered.
 - Execution, in which you sign the will in front of witnesses and a notary. After execution, you will have a completed will.
 - The Legal Assistance Office does not keep any copies of the wills or powers of attorney.



Communicating Your Plan

- Tell those close to you that you have a plan and explain where the documents are located or provide copies.
 - Tell the person you named as your agent in the health care power of attorney your wishes for your health care should you be injured or ill and unable to make such decisions for yourself.
 - Tell the executor of your will that you have named that person as an executor.
 - If you have named a guardian for your minor children, tell the guardian that you have done so.
- Remember: The Legal Assistance Office does not keep copies of any of these legal documents.



When to Update Your Estate Planning

- These documents will be indefinite unless you revise or revoke them. You should consider updating them in case of of:
 - Marriage
 - Divorce
 - Birth of a Child
 - Death of a Beneficiary
 - Other Significant Life Changes





Points of Contact

- For more information on any of the topics discussed in this presentation, or for any other personal legal issues, you may contact the local legal assistance office at:
 - Building 852
 - DSN: 928-269-2481 (for general inquiries only; no legal advice over phone)
 - <https://www.mcasyma.marines.mil/Staff-and-Agencies/Legal-Services-Support-Detachment/Legal-Assistance/>
- Military legal assistance attorneys elsewhere may also provide legal assistance advice.
 - You or your dependents may find an office in your geographic location by going to the Armed Forces Legal Assistance Locator at: <https://legalassistance.law.af.mil>