

**FORT JACKSON
CLIENT SERVICES DIVISION**

Do You need A Will?

A Will is a document which you use to distribute your assets and belongings after you die, as well as to make your wishes regarding guardianship of minor children known. When you have a Will written, what you are doing is stating specifically what YOU would like to happen to your property once you have passed away. If you pass away without a Will, the state law for the state where you live will determine who gets your property. This does not mean that the state will get your property, rather it is the state law, not you, that will decide who will receive your property.

In South Carolina, if you do not have a Will and you are married with children, you may not like what would happen to your property. Most people assume that their spouse would get all of their property. If you also have children (or grandchildren, etc.), that is not the case. If you have a spouse as well as children and you die without a will, your spouse will get one half of your property and your children will get the other half. In order to avoid this sometimes complicated result, you must have a Will prepared which states YOUR exact wishes as to the distribution of your estate.

A Will does not distribute all of your estate. Assets such as life insurance, and IRA's will be paid to the named beneficiary regardless of whether you have a Will. Joint bank accounts and jointly owned cars will pass automatically at death to the other person if they are owned as joint tenants. However, "real" property, such as your home will likely pass through your Will.

In a Will you must first choose who will be your Personal Representative. The Personal Representative is the person who will handle the actual probate of your estate. They have three jobs. First they must determine and collect the assets that make up your estate. Second, they must pay all of your just debts. Third, they take whatever is left over, after paying your debts and distribute it according to your Will. The Personal Representative must be appointed by the Probate Court in order to act on your behalf. Once they are appointed, they can access your financial holdings, and sell assets that were in your name. The people whom you nominate in your Will to be your Personal Representative will have priority over anyone else. You should also consider nominating at least one alternate as your personal representative in case your first choice is unable to act in that capacity.

Your next choice is how to distribute your assets. If you are married, you may want to leave everything to your spouse. This is your choice. You do not have to leave everything to your spouse. But, if you cut your spouse out of your Will, your spouse has the option of "electing" against the Will. If a spouse "elects" against the Will it means that they have chosen to take their "elective share" of one third of your estate. This is their right by South Carolina law and cannot be avoided.

Children, on the other hand, do not have a right to "elect" against the Will. Children have no right to inherit. The choice of whether to leave your estate to your children is solely yours. You can leave your estate to some of your children and not others, or you can exclude all of your children. But you must have a Will that expresses these wishes.

When deciding how to distribute your estate, you should consider who you would like to receive your property in the event your first choice dies before you. An example would be first leaving everything to your spouse, and then leaving it to your children in equal shares if your spouse died before you. You should plan now for unfortunate occurrences such as this.

If you have young children, you may want to consider how any inheritance they receive should be handled. You may want to create a trust for them in your will to care for the inheritance until they reach an age of your choosing. If this is a concern, you should consult with an attorney to determine how to best deal with your individual situation. Also, if your children are young, you should consider whom you would like to nominate as their guardian if you should die while they are under eighteen years old. This is a very important decision that should be given careful thought before hand.

If you have decided that you would like a Will you should call and make an appointment for a Will with the Client Services Division of the Fort Jackson Office of the Staff Judge Advocate. **WILLS ARE NOT AVAILABLE ON A WALK IN BASIS.** Will appointments are available Monday through Thursday between 0900 and 1100. In order to make an appointment please call the Client Services Division at 751-4287 between the hours of 0900 and 1600.