

Appointment Date _____ Time _____

CLIENT QUESTIONNAIRE **LAST WILL AND TESTAMENT** **AND DURABLE HEALTH CARE** **POWER OF ATTORNEY**



WILLS ARE BY APPOINTMENT ONLY

Wednesdays between 10 a.m. and 12 p.m.

(Worksheets must be completed prior to scheduling appointment)

Phone: (605) 385-2329

Fax: (605) 385-2338

LEGAL ASSISTANCE WEBSITE: <https://aflegalassistance.law.af.mil>

PREPARED BY
THE 28 BOMB WING LEGAL OFFICE
ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA

This worksheet will help us prepare your last will and testament. Please completely review this worksheet and answer each question carefully. **We will not be able to assist you properly unless you completely answer all questions that apply.**

This worksheet is NOT a will and has no legal effect. It is simply a tool to help us draft your will. After you complete the worksheet you will make an appointment with a legal assistance attorney during legal assistance hours. If you have any questions after completing the worksheet ask your attorney. He or she will answer any questions you might have and assist you in preparing your will in the manner you want.

If you are married, you and your spouse must each fill out separate worksheets because you each need YOUR OWN WILL. Even if one attorney advises you both, the attorney must tailor each will to conform to your individual needs.

PRIVACY ACT STATEMENT

1. **AUTHORITY:** 10 U.S.C. Sec 8037; E.O. 9397
2. **PRINCIPAL PURPOSE:** To gather information needed to prepare a last will and testament.
3. **ROUTINE USES:** Use by a legal assistance attorney in preparation of a last will and testament.
4. **DISCLOSURE IS VOLUNTARY:** You are not required to complete this worksheet. However, we cannot prepare a will for you if you do not. Information provided is subject to attorney-client privilege and cannot be given by a legal assistance attorney to anyone without your consent.

NOTE: Please read the following information BEFORE attempting to answer the questions. In order to simplify the drafting of your will, we have separated the explanations below from the worksheet on which you will provide your answers. The worksheet can be found at the end of this package.

1. **STATE OF LEGAL RESIDENCE (DOMICILE).** Legal residence, or domicile, is important because the law of your domicile will control many of the legal aspects of your will. While several states have, in many cases, made great strides toward uniformity, there are still some differences. Simply stated, your state of legal residence is the state you consider **your home**. If you are active duty, you may consider a state other than South Dakota to be home. If so, you should identify that state. It may be the state you entered the service from. On the other hand, it may be the state where you plan to retire. If you have retired in the local area, South Dakota is probably your domicile. If you have questions about your domicile you should ask your legal assistance attorney.

2. **LIVING WILLS AND/OR DURABLE POWERS OF ATTORNEY FOR HEALTH CARE.** Estate planning frequently involves more than just having a will. We can provide living wills and durable powers of attorney for health care when we prepare your will. A living will, also known as an advance directive to physicians in some states, permits you to express your wishes regarding resuscitation and life maintaining measures in the event you later become incapable of communicating your desires. It can help you try to avoid what some believe to be an undignified existence by allowing you to decline medical treatment, food, and water if these things are "artificially" keeping you alive.

A durable power of attorney for health care, on the other hand, allows you to appoint another person to make decisions for you regarding your medical care in the event you cannot. This power is broader than the living will. It, too, covers situations where you may be terminally ill and need resuscitation or other life maintaining measures to stay alive. Your agent, or attorney-in-fact, can decline these treatments if you give them that power. It also applies to situations where a health care decision is required but you cannot make that decision yourself (i.e., you are unconscious as a result of injury). Your agent could authorize or decline medical treatment on your behalf. Many of our clients find these tools to be an important part of their total estate plan.

If you decide to create either a living will or a durable power of attorney for health care, you will need to consider several things before you complete the documents. You will have to provide the name and contact information for the individual(s) that you nominate to make health care decisions for you in the event that you cannot make them. You can permit or refuse to permit donation of your organs for transplant. You can also permit or refuse to permit donation of your body for scientific or educational purposes. Some people wish to spend their last days at home rather than in a hospital. You can express your wishes regarding this issue in both of these documents. Finally, you can express your wishes about funeral arrangements. For example, you can express a desire to be buried with military honors or if you wish to be cremated or buried in a specific location, you can make your desires known in your living will and durable power of attorney for health care.

Please consult with your legal assistance attorney if you desire to execute or have questions regarding either or both documents.

3. **SIZE OF YOUR ESTATE.** One of the most important initial pieces of information we must know to properly advise you on the format for your will is the size of your estate. If your estate exceeds \$1,500,000 you will need more than a basic will. For estate tax purposes, the amounts of life insurance you own on your life or the life of another are included in the \$1,500,000. Because of estate tax rules, estates in excess of \$1,500,000 require special handling. An estate over the amount of \$1,500,000 is considered a complex estate

THIS INFORMATION IS SUBJECT TO THE PRIVACY ACT OF 1974

and is outside the expertise of our legal assistance attorneys. You must consult an attorney who specializes in estate planning in the local community. The South Dakota Bar Association has a referral service to assist you in finding an attorney in the local community at 1-800-952-2333.

4. REAL ESTATE. Due to the unique nature of real estate and the way the law of most states treats it, real estate is usually singled out and treated separately in a will. If you own your real estate jointly with rights of survivorship or by the entirety (i.e., with your spouse) it will automatically pass to the surviving joint owner on your death. Any attempt to transfer by will your interest in jointly owned property would not be effective. However, it would not hurt to name the other joint owner as the beneficiary under your will. Assuming the other joint owner dies before you, you can name an alternate beneficiary. If you own several pieces of real estate (i.e. houses, condos, unimproved land, etc.), it is recommended you identify in the will the properties by their legal description found in the deed (lot number, etc.) and who shall receive them. If the legal description is not known, a street address may be used.

5. TANGIBLE PERSONAL PROPERTY/PERSONAL EFFECTS. Tangible personal property is property that you can touch and feel, like your car and your furniture. Personal effects are things like clothing, jewelry, and furniture. You may give your personal property and effects to anyone you want. Many people want to give specific items of personal property to specific persons. If you will be giving any specific property to specific persons, please ensure you adequately identify the item you wish to give and the person to whom you wish to give it.

You may request a PERSONAL PROPERTY MEMORANDUM. A Personal Property Memorandum is a document that lists specific items to be given to specific individuals. It is a document that is separate from the will, but it is referenced in the will. The Personal Property Memorandum can be changed at any time by simply destroying the previous Personal Property Memorandum and creating a new one. It is recommended that the Personal Property Memorandum be stored with the will.

6. SPECIFIC GIFTS OF CASH. You may want to give a specific sum of money to a specific person or organization. To do so you must either have cash available as part of your estate or have other assets that can be sold to generate the necessary cash. Some clients mistakenly assume this is where they direct who shall take their life insurance. **YOU CANNOT NORMALLY GIVE YOUR LIFE INSURANCE AWAY IN YOUR WILL.** Life insurance is not part of your estate unless your estate becomes the beneficiary of the insurance for some reason. Rather, life insurance is a contract, outside your will, where the insurance company must pay the beneficiaries you name in the policy. You cannot give away proceeds from your life insurance in your will unless those proceeds become part of your estate. If you are making gifts of cash to specific people, indicate to whom and the amount you want to give.

7. RESIDUARY ESTATE. You will be asked to list to whom you wish to leave your residuary estate. Your residuary estate is everything left that you have not previously given away. It includes intangible property like stocks, bonds, mutual funds, bank accounts and any other property that, for whatever reason, did not pass as part of your other gifts. Usually, the residuary estate is also where any trusts you would appear in your will. A trust is a legal instrument where you can give property to a "trustee" to manage for someone else (often minor children). If you choose to create a trust for minor children, you must pick the age you want the trustee to dissolve the trust and distribute the property free of trust to the children.

*** Note: Creating a trust is a complex process, beyond the scope of what our legal assistance attorneys can provide. Therefore, your legal assistance attorneys will not create a trust for you. Rather, they will refer you to a lawyer referral service to better effectuate your wishes.**

8. DEFINITION OF "MINOR". A child becomes an adult under most state laws at age 18. You might decide your child would not be mature enough to receive your property at age 18. If so, you can select another age at which your property will be distributed to a child or children. The most common ages besides 18 are 19, 20, and 21. If you choose an age higher than 21, a trust must be created. Creation of a trust is beyond the scope of what our legal assistance attorneys can provide. See the note above in paragraph 7.

As mentioned above, you must select at which age you wish to consider your children as adults. In the event you have not yet had any children, or if your children are all grown, a good default age is 18. Remember, your children are not the only minors who might take property under your will. Other minors may include brothers/sisters, grandchildren, nephews/nieces, cousins, etc. Therefore, it is always smart to clearly define the age of majority.

9. NAMES OF ALTERNATE BENEFICIARIES (if applicable). You may intend to give your property to other specific people in the event the persons you originally intended to benefit do not survive you. If so, you need to provide us with their complete names, and their relationship to you, so that we can include them in your will.

10. PERSONAL REPRESENTATIVE. When preparing a will it is necessary to nominate a person to act as personal representative of your estate. Your personal representative will be your agent for winding up your business affairs upon your death and carrying out your wishes for distribution of your property as stated in your will. This person should be capable of making important decisions on your behalf soon after your death. Therefore, you should take care to nominate a person who you are confident can think and act clearly under often stressful conditions.

Many people wish to nominate their spouse as personal representative. This may or may not be a good idea, depending on your spouse and their ability to act after your death. You may be similarly wary of nominating other family members or close friends. Most of our clients do nominate spouses or other close relatives as personal representative and these people usually serve well in that capacity. Use your best judgment in nominating someone to this important position. Talk to the people you are considering and get their feelings on this subject before nominating them in your will. In case your nominee cannot act as your personal representative for some reason, you should nominate an alternate as well. Note that your personal representative must be at least 18 years of age.

When identifying your personal representatives, please take care to spell their names correctly. You may include middle names and their relationship to you, if you wish.

11. GUARDIANS. One of the most important things parents of minor children should do with their wills is nominate a guardian or guardians for their children. Parents want their children raised in a loving home. If you die while your children are minors the best way you can help ensure they are raised in a loving home is to name their guardian(s). If you fail to name a guardian(s), the court will appoint one for you. However, there is no way the court could do as well as you in making this important decision.

When picking guardians, you should consider the age of your children as well as the age and health of the prospective guardians. For example, regardless of the love felt by grandparents for their grandchildren, it may not be wise to nominate your parents as guardians if your children are very young. Remember, the decision you make now should be valid in ten to fifteen years. As with personal representatives, it is often prudent to select an alternate guardian or guardians in the event your first choice is unwilling or unable to perform. We recommend that you talk to prospective guardians and get their agreement to so act before nominating them in your will. When naming the guardians, you may wish to indicate the relationship of the intended guardian to the child (i.e. aunt, uncle, etc.).

12. DISINHERITANCE. Sometimes people want to disinherit someone from their will. This may not have anything to do with ill feelings. To the contrary, in most cases people may need to disinherit people they love very much in order to accomplish their overall estate plan. The situation we see most frequently is where the person making the will, the Testator, has children from both a prior and a current marriage. To ensure fair treatment for all children the testator may disinherit one group of children and provide for them by other means (i.e. by buying life insurance). Where the testator has been married only once and only has children from that marriage, a gift to the spouse usually ensures that the children are provided for. For obvious reasons this is not always the case when there has been a second marriage. If you want to disinherit someone like a spouse or child from receiving any property under your will, you need to do so specifically. However, in some cases, this may not be allowed under South Dakota law. Consult your legal assistance attorney for more details.

13. TREATMENT OF ADOPTED AND STEP-CHILDREN. If you have adopted children or stepchildren, you must decide whether you want these children treated as if they were your own natural children.

14. MILITARY SERVICE CLAUSE. Wills for servicemembers on active duty, or those retired from active duty, shall make reference to their military service. Members of the Armed Forces and their dependents may be entitled to special benefits or privileges by virtue of that military service. A "military service clause" will direct the personal representative to contact the Veteran's Administration, the Personal Affairs Office at the nearest military installation and any other relevant government agency. The personal representative will determine whether beneficiaries are entitled to any benefits based upon the servicemember's military service.

15. NAMES. Please be very careful to provide complete and correct spelling for each name provided.

**** Thank you for taking the time to complete this questionnaire. Your careful preparation will increase the efficiency and accuracy of the legal services we gladly provide to you. ****

WILL WORKSHEET (ELLSWORTH AFB, South Dakota)

Note: Each appointment is approximately 30 minutes for one person, 60 minutes for a couple. It is very important that you fill this form out completely. Often, we draft the wills before you arrive, if possible. If you are not sure what you want and need legal advice, you can request a legal assistance appointment to discuss your will prior to filling out this questionnaire.

Your Full Legal Name: _____

First

Middle

Last

Your Gender: (*circle one*) Male Female

Your Full Address:

Street: _____

City: _____ State: _____ Zip Code: _____

Your Contact Phone: (____) _____ - _____

Are You A U.S. Citizen? (*circle one*) Yes No

What Is Your State Of Legal Residence? _____

What Is Your Current Military Status?

- In Military Service Retired Spouse of Military Member
 Dependent of Military Member Spouse of Retiree Former Spouse of Retiree
 Spouse of Deceased

What is your current marital status?

- Single, never married Widow or Widower
 Married once and spouse is alive Married and spouse is alive, but previously married
 Divorced, not presently married Divorce pending

Spouse's full legal name: _____

Spouse's contact phone: (____) _____ - _____

Is your spouse a U.S. Citizen? (*circle one*) Yes No

How many children do you have? #Biological _____ #Adopted _____ #Step-children _____

Do your children have any physical or mental disabilities? Yes No

If yes, what is the child's name and the nature of their disability?

Are any of the children from a prior marriage or relationship? Yes No

Do you have any adopted and/or step-children you want treated the same as your biological children so they would share equally in the estate? Yes No

Are any of your children minors (*under the age of 18*)? Yes No
 Children's information:

Full Legal Name	Age	Male/Female	Biological/Adopted/Step

What is the estimated current value of your estate? (*Includes: land, houses, condos, other buildings, personal property, money in bank account, stocks, and financial instruments*)

- Less than \$500,000
 Between \$500,000 and \$1,000,000
 Between \$1,000,000 and \$2,500,000
 More than \$2,500,000** (**We do not draft Wills for estates larger than \$2,500,000)

Do you own a farm or family-owned business? Yes No

Do you own a house or land you want to leave to your heirs under your will? Yes No

How many houses/pieces of land do you own? _____

In what state(s) are your house(s) and/or land located? _____

Do you want to treat your real estate and personal property the same? Yes* No

Do you want to give your entire estate to your spouse, and then to your children in equal shares if your spouse passes away before you? Yes* No

If yes, and one of your children passes away before you, do you want that child's share to go to his/her children (your grandchildren)? Yes No

**If you selected "yes" to the above questions marked with an *, skip the next four (4) questions.

Who do you want to leave your house/land to? _____

Do you have specific items you want to leave to particular people? Yes* No
 (*For example, "I give my ruby necklace to my granddaughter, my red car to my son, and my piano to my niece."*)

If "yes", we will draft a Personal Property Memorandum, so you can fill it out in the comfort of your own home, and change it as necessary without needing a new Will. You do not need to list the items in this worksheet.

If "no", who do you want to inherit your personal property (*furniture, jewelry, vehicles, etc.*)?
 (*If you have a Personal Property Memorandum, those items will be excluded and treated separately*)

The "rest" of your estate is called the residuary. It's the "rest" of the things you own that have not been specifically listed above. Who do you want to inherit the "rest" of your estate? _____

Do you want your children to inherit at the age of 18, 21, 25, 30, 35, or older? (*choose one*): _____

Do you want to disinherit someone? Yes No

If yes, who? _____

Do you want to leave a pet trust for the care of your animals? If so, how much and for which pets?

Who do you want to be your Executor/Personal Representative? ****Don't forget your spouse**

(Full Legal Name)

(Relationship)

If the first person you choose as your Executor is unable, unwilling, or unavailable to act, who do you want as your alternate?

Full Legal Name

Relationship

First alternate: _____

Second Alternate: _____

If you have minor children, you can name a guardian and alternates in the event that you and the other parent pass away when the child(ren) is still under the age of 18. If you wish to do so, give full legal names and relationship below:

Full Legal Name

Relationship

State Where Guardian Resides

Primary: _____

First Alternate: _____

Second Alternate: _____

Do you want any of the people above to be co-guardians? (*Raise the child(ren) together*) Yes No

If so, who? _____

What is your preference in regards to funeral arrangements?

Burial Cremation Buried at sea Donate body to medical/scientific purpose No preference

Do you desire full military honors? (*Available to active duty, reserve, retired, and honorably discharged veteran members*) Yes No

If you have a preference of where your burial/cremation is to take place, or where your ashes are to be scattered, please describe your wishes: _____

LIVING WILL

A **Living Will** states that you do not want to be kept alive by machines or other artificial means if two physicians say there is no chance of recovery.

Do you want this document? Yes* No

*If yes, fill out the questions below:

*Should your agent be authorized to donate your organs for transplant? Yes No

*Are you willing to donate organs and tissues, not just for transplants, but also for medical, educational, or scientific purposes? Yes No

*Is the authority to donate organs to expressly exclude certain organs or other contain detailed restrictions?
If yes, please specify: _____

*Should organ donation be authorized only if there is no cost to your estate or your heirs? Yes No

In the event of an incurable, terminal medical condition, do you desire life-sustaining treatment such as breathing machines or CPR? Yes No

Do you desire life-sustaining treatment such as food and water through a tube if you can no longer chew or swallow on you own? Yes No

Do you wish to express a desire to die at home rather than in a hospital? Yes No

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

A **Health Care Power of Attorney/Health Care Surrogate** appoints someone to make health decisions for you if you are in the hospital and cannot make the decision for yourself.

Do you want this document? Yes* No

*If yes, fill out the questions below:

*Do you want to name your spouse as your agent? Yes No

*Does your spouse have the same address? Yes No

Do you wish to authorize a second person to act as your agent? Yes No

First alternate: _____
(Full Legal Name) *(Relationship)*

Street Address: _____

City: _____ State: _____ Zip Code: _____

Contact Phone: (____) _____ - _____

Second alternate: _____
(Full Legal Name) *(Relationship)*

Street Address: _____

City: _____ State: _____ Zip Code: _____

Contact Phone: (____) _____ - _____

Do you wish to designate another alternate agent for health care decisions? Yes No

Additional Agent: _____
(Full Legal Name) *(Relationship)*

Street Address: _____

City: _____ State: _____ Zip Code: _____

Contact Phone: (____) _____ - _____

Additional Agent: _____
(Full Legal Name) *(Relationship)*

Street Address: _____

City: _____ State: _____ Zip Code: _____

Contact Phone: (____) _____ - _____