

## Wills and Trusts: Best Practices for Military Families



To safeguard your family's financial future and to prevent your estate from getting tied up in the court system, you need to have a plan for what you want to happen to your assets after you pass away.

Servicemembers face a heightened level of risk in their everyday lives compared to the general public as a function of their careers. Because of this, it's important that you have your affairs in order *now* so that if something unexpected happens in the future, your family can avoid the additional heartache of waiting for a judge in a probate court to decide what happens with your belongings, your accounts, and – in some cases – your children.

There are two main items that you can use to prepare your estate: a Last Will and Testament, commonly called a "will," and a trust.

### Wills

A Last Will and Testament is a legally binding document that details your wishes for how your estate should be handled after your passing. Within it, you can designate an executor, beneficiaries, and a guardian for any minor children. Furthermore, a will is typically used to share explicit instructions for how and to whom remaining assets should be distributed as well as express your wishes for funeral and/or burial arrangements.

An **executor** is a person named in a will who is tasked with making sure that the terms of the will are carried out. They are responsible for filing the appropriate paperwork with probate court, ensuring that any outstanding payments are made after your passing, and distributing assets to beneficiaries. An executor is often a family member or friend, but they could also be an attorney.

**Beneficiaries** are the entities to whom assets will be distributed after your passing. They are often individuals, but you could also list a business, charity organization, trust, or other entity. It is important to note that ***a beneficiary designation in a Last Will and Testament does not override a beneficiary designation on a life insurance policy.*** Any individual listed as the beneficiary of a life insurance policy



(including SGLI and VGLI), Thrift Savings Plan or other retirement account, or bank account will receive the associated proceeds regardless of contradicting wishes expressed in a will.

**Note:** Review your beneficiaries every time something big happens in your life, like marriage, divorce, birth of a child, death of a loved one, buying a house, etc. These life changes may affect who you wish to be your beneficiaries. To ensure your assets are distributed to the right person, you must update your wishes.

A **guardian** is a person named in a will who is entrusted to care for children under age 18 or those who are physically or mentally unable to care for themselves after your passing. Because you cannot predict the timing of your passing, it is often wise to choose alternate guardians in the event that the named guardian cannot fulfill their duty of care.

When you pass away, your will may need to be verified as legitimate by probate court, after which the executor of your estate can begin distributing your assets. Depending on the value of your estate and your location, however, this may not be required. Estates that qualify as “small estates” are able to submit a small estate affidavit to the court, which allows for a more simplified probate process. However, what qualifies as a small estate varies by state. Regardless of the size of your estate, your executor typically needs to file your will with the court so that it can become public record.

**Note:** If you pass away without a will, state law will determine who will care for your children, what happens to your pets, and who will inherit your money and property. In addition to verifying the legitimacy of a will and guiding the distribution of the estate, probate law also governs intestate deaths (those that occur without a will in place). Through this process, the court will name an executor. This may be your surviving spouse, if you have one, or it could be a “public trustee,” in other words, a total stranger who is tasked with distributing your assets according to law (estates are typically divided among living relatives). Until the court designates an executor, probate law mandates that all assets contained within the estate are frozen and cannot be accessed for any purpose. The cost to probate an estate may also cost between 4–7% of the estate’s value. Having a written will, even if your estate still needs to be probated, simplifies the process and will save money.

As an active duty or retired military member you have access to [legal personnel on base](#), and they will be able to help you create your will at no cost. The American Bar Association also maintains [a directory of legal programs](#) that are available to military families in each state.

Learn more about Last Will and Testaments [here](#).

## Trusts

A trust is a legal relationship where one or more persons manage property on the behalf of others. In other words, a trust is able to hold assets outside of your personal estate. More specifically, a trust is an agreement between two people in which you (the grantor, or creator of the trust) make property available to a trustee (the manager of the trust) for certain purposes. The trustee agrees to manage the property according to your wishes.

All types of trusts involve three main people: the grantor, the trustee(s), and the beneficiaries. The **grantor** creates the trust *and* puts assets into the trust for distribution later on. A **trustee** is a person named by the grantor to administer the trust – following the instructions laid out in the trust documents and ensuring that beneficiaries receive their designated assets as appropriate. A grantor may name



more than one trustee or name a successor trustee who can step into the position of trustee if the individual(s) originally designated can no longer manage the trust. The **beneficiaries** are those who receive assets from the trust. A trust document is typically signed by both the grantor and the trustee as well as a notary. This document is crucial when it comes time for the trustee to administer to the grantor's estate.

There are two basic types of trusts:

1. **Revocable and Irrevocable Trusts:** These types of trusts are *created during the lifetime of the grantor* and may or may not allow active management of the assets contained within them. A grantor can make changes to a revocable trust at any point during their lifetime, but contributions to an irrevocable trust shift ownership of assets outside of the grantor's estate immediately, and therefore changes cannot be made without consent of the trust's beneficiaries. Both types of trusts are managed by a trustee, who then distributes assets to beneficiaries after the grantor's death at a time designated by the trust agreement. These trusts allow a trustee to immediately take care of the grantor's end-of-life affairs and distribute assets **without having to go through probate**. Note that only *assets* can be managed by a trust; one cannot appoint a guardian for minor children in this way.
2. **Testamentary Trust:** This type of trust is *created upon the death of the grantor* by their Last Will and Testament and allows the grantor to manage their assets outside of a trust during their lifetime. It is often used when the grantor's beneficiaries are minors. Typically, this type of trust holds assets until the beneficiaries reach a certain age, for example, releasing money when a beneficiary turns 18 and needs access to funds for higher education. However, it does not avoid probate or the associated expenses – probate always accompanies the determination of the validity of a will and carrying out its instructions.

**Note:** A trust *can* be the designated beneficiary of a life insurance policy. If you have minor children and want to ensure that they gain access to the funds upon reaching adulthood, setting up a trust to be funded with the proceeds of your life insurance policy guarantees that your wishes will be followed. You have full control over how much the trust pays out to its beneficiaries and when it makes those payments.

If you participate in the Survivor Benefit Plan and have elected Spouse and Child or Child Only coverage and you have a disabled, dependent child who cannot care for themselves, you may designate that payment be directed to your beneficiary via a Special Needs Trust. This is an irrevocable decision. Learn more [here](#).

Setting up a trust typically requires the services of an attorney.

The most important consideration when it comes to wills and trusts is remembering to keep your documents updated. When your family circumstances change due to a birth, a death, a marriage, or a divorce, it's important that you alter your last wishes accordingly. It is also important that you update your documents upon the occurrence of big life events: deployments, moves, large purchases, etc. Any event that may change how you'd like your assets distributed should be an indication that you need to, at a minimum, review your wishes.

Use our [Estate Planning: Personal Log](#) to compile all of your estate planning information. Including information about your will and any trusts you have set up – where to find original documents, the name of your executor or trustee, and anything else you would want immediately known – will ensure



that the process of distributing your estate to your loved ones is done quickly and smoothly after your passing.

Estate planning is an important step for military families but knowing how to get started can be tricky. Fortunately, Navy Mutual is here to help. If you need to change the beneficiary on your life insurance policy or an annuity, you can do so through your Navy Mutual Customer Portal. To discuss life insurance options or to make sure that your current insurance policy fits your needs, [click here](#), or email us at [counselor@navymutual.org](mailto:counselor@navymutual.org).

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