WILLS AND ESTATE PLANNING

The term "estate planning" means more than simply getting a will. Estate planning includes establishing beneficiaries for life insurance (including SGLI), guardianship plans for minor children, designating "payable on death" for bank accounts, mutual funds, and other fungible assets, and letting your executor know how you would like your personal effects and funeral arrangements to be handled. A will may be a portion of this planning process, but is not always necessary for effective estate planning. Legal Assistance will advise you on basic estate planning, but if you have substantial assets, it may be wise to find an attorney who specializes in estate planning.

Determining your need for a will: People who die without wills are said to die "intestate." If you are single, have no children or dependents, do not own property with another, and plan on leaving everything to your parents in equal shares, you do not need a will. Everything you own will pass to your parents by operation of law (in most states), even without a will. If you are married and have no children, in most states, everything passes to your spouse as well. If you have children, the most important reason to have a will is to ensure that there is a guardianship plan in place in for your minor children.

Example: Single soldier dies with no children. Soldier's possessions pass to the mother and father in equal shares.

Example: Single soldier dies in an accident that also claims his parents. The soldier's estate will pass to his siblings in equal shares.

Determining your beneficiaries: The State of Texas does not have a "laughing heir" statute. Accordingly, there is no cut-off point where a family member, so distantly removed from you, would "laugh" at their good fortune rather than mourn your death. Some states cut off intestate succession after the 3rd or 4th removed relatives. If you really want to ensure that a family member gets nothing from the estate, you should disinherit the family member. This is particularly important where the individual is part of your immediate family.

Other Will Information

You cannot be compelled to create a will. Accordingly, if you are getting a will only because your commander or your first sergeant is making you, then you should not get a will. If you wish to make changes to you will, you should simply draft a new one. You should not write on the will, staple anything to the document, or try to make changes to the document. You may make copies of your will; however, recognize that only the original document is valid and may be probated by the court.

You should keep your will in a safe, dry place, such as a fire-proof safe. The Fort Bliss Legal Assistance Office does not recommend keeping your will in a safety deposit box, because that box can be frozen upon your death, requiring a court order to be opened.

Wills are easy to revoke. You may revoke your will be destroying it in some way. Additionally, if your executor cannot find your will when you pass away, it is as if the will was destroyed or never drafted. Finally, any time that you make a new will, a clause is added that states that your old wills are revoked. Accordingly, the will with the last date is the one that the court will actually probate.

You do not need a will to manage your SGLI. Life insurance is not probated; therefore, it does not pass "through" the will. However, if you have children, you may need to set up a trust to manage SGLI conferred upon your children.

If you decide to make an appointment for Estate Planning and you are married, consider making an appointment for you and your spouse together. Wills are completed and executed on Tuesdays. You should expect to be at your appointment for an hour to an hour and a half per person.

If you have questions, contact the Fort Bliss Legal Assistance Office at (915) 568-7141/7150 for an appointment to speak with an attorney.