LIVING WILLS & RELATED POWERS OF ATTORNEY 52 FW/JA

The thought of being placed in an irreversible coma is a scary one, and the permanent incapacitation of a loved one can be a highly stressful time for everyone involved. Three separate yet related documents can help reduce stress and ease the decision making process for your loved ones in the event of such a tragedy. First, a living will ensures that your desires about the extent medical care you wish to receive are honored. A properly executed durable power of attorney for healthcare allows for these healthcare decisions to be made by someone you trust. Finally, a springing durable power of attorney for finances allows someone you trust to handle your financial affairs should you become incapacitated.

A living will, known in many states as a Directive to Health Care or Healthcare Directive, sets out your wishes about the extent of medical treatment you would like to receive, should you become unable to communicate those wishes. Upon receiving a properly signed and witnessed living will, a doctor has a duty to either honor the instructions or to make sure you are transferred to the care of another doctor who will.

Many people mistakenly believe that living wills are used only to instruct doctors to withhold life-prolonging treatments. In reality, a living will is also the proper place to reinforce your desire to receive medical care to the fullest extent available.

A durable power of attorney for healthcare, also called a healthcare proxy, empowers another person to make medical decisions for you in the event you are unable to make them yourself. Unlike a living will, this document doesn't necessarily establish the extent of treatment you want to receive. Ideally, the living will and durable power of attorney for healthcare will work together. The person you designate as your healthcare proxy can work in concert with your living will to ensure your wishes are carried out. Should you choose not to complete a durable power of attorney for healthcare because you do not know anyone you trust to name as your healthcare proxy, it is still important to complete and finalize a living will. A living will alone will require doctors to give you the extent of medical care you want.

Both the living will and a durable power of attorney for healthcare become effective when three things happen:

- you are diagnosed to be close to death from a terminal condition or to be permanently comatose;
- you cannot communicate your own wishes for your medical care orally, in writing, or through gestures; and
- the attending medical personnel are notified of the written directions for your medical care.

A springing durable power of attorney is another related document, and it is a simple, inexpensive, and reliable way to empower someone to make financial decisions in the event you are unable to make them yourself. The power of attorney is "springing" because it will only "spring" into effect if a doctor certifies that you are incapacitated. Like the other two documents, a springing durable power of attorney is another way to ease the burden placed on your loved ones.

The springing durable power of attorney can give your designated agent as much or as little power as you desire. Notably, you may consider giving your agent authority to do some or all of the following:

- use your assets to pay the everyday expenses and those of your family;
- buy, sell, maintain, pay taxes on, and mortgage real estate or other property;
- collect and distribute benefits from Social Security, Medicare, other government programs, or civil or military service;
- handle transactions with banks and other financial institutions; and/or
- file and pay your taxes.

Whatever powers you give your agent, he or she is obligated to act in your best interest, to keep accurate records, and to keep your property separate from his or hers to avoid conflicts of interest. Therefore, choose your agent very carefully. It should be a person you trust, to reduce the risk that the power could be used to your disadvantage.

A power of attorney loses all power at your death. Thus, you cannot give your agent authority to handle things after your death. The person with power to manage your affairs after your death will need to be named executor in your will.

Once signed, the living will should be kept at home with other important papers in a safe place, such as a fireproof box. The original or a copy may also be placed with your medical records. Some states require that a wallet card be carried confirming the existence and location of a living will. You may further choose to give family members copies of the living will as additional evidence of your choice not to receive life-prolonging treatment.

You should consult a legal assistance attorney to determine which living will provisions are required in your home state. Attorneys are able to explain state-specific living will provisions, draft a living will, and have the living will signed in accordance with applicable state law.

For all powers of attorney, including the durable power of attorney for healthcare and the springing durable power of attorney, the agent you select must have the original document to be able to act on your behalf. A copy will not do. Therefore, either send the original to your designated agent or let him or her know where the original is kept, so that they may retrieve it when necessary.

There are a number of ways a power of attorney can be revoked, and, as long as you are mentally competent, you can do so at any time. In some states, if your spouse is selected as your agent, his or her authority is automatically revoked if you divorce. Destroying the original also revokes a power of attorney. A written revocation is also an effective method of revocation.

If you have any questions about living wills, durable powers of attorney for health care, or springing durable powers of attorney, please call the Spangdahlem Air Base Legal Office at DSN 452-6796/6797.

CAUTION: This pamphlet is not legal advice. It is designed to provide information about living wills and related powers of attorney. However, it provides only general guidance. The specific facts in your case may involve different legal issues not discussed here. For best results, consult your legal assistance advisor.

WILLS
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A will is a legal document that directs how your estate is to be distributed after your death. A will appoints an executor to handle your affairs, identifies the beneficiaries who will inherit your estate, and can name a guardian to care for any minor children.

DO YOU NEED A WILL?

A will is a very helpful document, although most Americans die without one. The consequences of dying without a will vary depending on the individual's personal circumstances (e.g., domicile, amount and type of property, etc.). Wills become more important as your assets and family grow. If you are a parent with minor children, a will is crucial because it can name a guardian and arrange financial support for your children, even past age eighteen (18). Wills are personal to each individual, so, if you are married, each spouse must have a separate will.

If you are single and have few assets, you may not need a will. Without a will, your assets will go to your closest relatives, likely your parents or siblings. If you die without a will or any eligible relatives, your estate would become the property of your state of residence.

Steps to Prepare Your Will:

1. Review this handout and then complete a will worksheet, available online at https://aflegalassistance.law.af.mil

2. Call the legal office at 452-6796 to make an appointment to have your will drawn up and executed.

WHAT SHOULD I CONSIDER WHEN MAKING A WILL?

When drafting your will, you will need to make a number of different decisions. Specifically, you must decide: who the beneficiaries of the will are; who to name as executor to handle your property after your death; and who will act as the guardian of your children. Additionally, you should consider what you want to happen in the event both you and your spouse die. Also, if you have children who have yet to reach the age of majority, you should consider whether you want your property to go to them directly or into a trust that holds in their benefit.

Beneficiaries:

Beneficiaries are those people named in your will who will receive a portion of your estate. Your estate consists of all your assets that do not pass automatically upon death. Although your spouse and children would most likely receive your estate if you die without a will, a will helps to expedite the process. A will also allows you to distribute your property as you see fit, not as the governing state laws mandate.

In most states, you cannot completely disinherit your spouse. If you live in a community property state (Alaska (only if you have made a written community property agreement), Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington or Wisconsin), your spouse automatically owns half of what either of you earned during your marriage, unless you have a written agreement to the contrary. If you decide to disinherit your spouse or your child, or the child of a deceased child, your will should clearly state that intention.

Executor (Personal Representative):

The executor's job is to protect the deceased person's property until all debts and taxes have been paid, and then to transfer the remainder to beneficiaries in the will. An executor is not required to be a legal or financial expert; the executor must only display reasonable prudence

and judgment. The law does require the executor to exhibit highest degree of honesty, impartiality, and diligence. This is called a "fiduciary duty" -- the duty to act with scrupulous good faith and candor on behalf of someone else.

The extent of the executor's duties will depend on the complexity of the deceased's estate. Typically, an executor must read the will and: determine who inherits which property; find your assets and manage them during the probate process; handle day-to-day matters, such as canceling credit cards and notifying banks and government agencies of your death; and pay debts and taxes using estate funds.

The person you choose should be someone you know to be honest, with good organizational skills and the ability to keep track of details. If possible, name someone who lives nearby and who is familiar with your financial matters. By choosing wisely, you will make it easier for the executor to do chores like collecting mail and locating important records and papers.

Many people select an executor who will inherit a substantial amount of the estate. This makes sense because a person with an interest in how your property is distributed is likely to do a thorough job of managing your affairs after your death. He or she may also come equipped with knowledge of where your records are kept and an understanding of why you want your property left as you have directed.

Whomever you select, make sure the person is willing to do the job. It helps to discuss the position with them before you make your will.

Your state may impose some restrictions on who can serve as an executor. For example, you may not name a minor, a convicted felon, or someone who is not a U.S. citizen. Most states allow you to name someone who lives in another state, but some require that an out-of-state executor be a relative or a primary beneficiary under your will.

It is important to name an alternative executor because an executor can refuse the position or resign from it at any time.

Guardian:

If you have children, it is imperative that you designate someone to serve as your children's guardian in the event both you and the other parent are deceased. In the absence of a will that names a guardian, a judge will decide where the children will go based on the law, without the benefit of your opinion on who would do the best job of raising your children.

You should name one personal guardian (and one alternate, in case your first choice cannot serve) for each of your children. Legally, you may name co-guardians, but doing so carries the risk that co-guardians will disagree.

Here are some factors to consider when choosing a personal guardian:

- Is the prospective guardian old enough (i.e., at least eighteen (18) in most states)?
- Do you and your children have confidence in the prospective guardian? Does the guardian have a genuine concern for your children's welfare?
- Are they physically able to handle the job?
- Does he or she have the time?
- Will the prospective guardian become too old before the child reaches the age of eighteen?
- Does the prospective guardian have children of an age close to that of your children?
- Can you provide enough assets to raise the children? If not, can your prospective guardian afford to bring them up?
- Does the prospective guardian share your moral beliefs?

CAUTION: This pamphlet is designed to provide only general information about wills. For best results, consult your legal assistance advisor.

POWERS OF ATTORNEY
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A Power of Attorney (POA) can be a useful tool for managing your personal affairs, especially if you travel often or are located far from home. This handout is meant to help you understand what a Power of Attorney is, what it can and cannot do, and how they are properly used.

WHAT IS A POWER OF ATTORNEY?

A POA is a document that allows someone else, your agent, to act on your behalf. In essence, it transfers legal power and authority to your agent to do something you could do if you were personally present. Acts performed by your agent that are within the POA authority are legally binding upon you. Thus, you should give a POA only to individuals you believe to be very trustworthy.

There are two basic types of POA, general and specific. A General Power of Attorney grants very broad powers to the agent. It allows the agent to do almost anything you could do yourself. In light of its breadth, a General Power of Attorney should be given only to someone whom you trust to handle everything you own.

In comparison, a Special Power of Attorney is more limited. It grants the agent very specific powers to act on your behalf; for example, the power to sell a particular car at a certain price, or to consent to medical treatment for your child. It is helpful to have Special Powers of Attorney for specific things in lieu of a General Power of Attorney.

A particularly important type of Special Power of Attorney is the Spangdahlem Special Power of Attorney. This POA is designed specifically for Spangdahlem Air Base, and it allows your agent to take care of almost all of your on base needs while you are deployed.

WHAT ARE THE LIMITATIONS ON POWERS OF ATTORNEY?

There are a number of limitations on POAs. First, there are internal limitations. For instance, you cannot use a POA to give your agent the ability to vote or reenlist for you. Another important internal limitation is that POAs typically become void upon incapacitation of the grantor. The reason for this is because a POA transfers to the agent only those powers that the grantor would have if personally present. Thus, if the grantor becomes incapacitated to the point that they are incompetent to handle their own affairs, then the agent will be disqualified from acting as well. However, it is possible to draft a POA that is not dissolved by incapacitation of the grantor. By explicitly stating in the document that "this power of attorney shall not be affected by disability of the principal," you create what is called a Durable Power of Attorney. This type of POA survives incapacity. There are also Springing Powers of Attorney, which will only "spring" into effect if a doctor certifies that you are incapacitated.

In addition to internal limitations on POAs, there are also external ones. For instance, while most POAs are widely accepted, people and businesses are under no obligation. Also, some organizations do not accept a General Powers of Attorney, but do honor Special Powers of Attorney. For example, the Finance Office typically will not accept a General Power of Attorney to allow an agent to inquire about a service member's pay. However, they will take a Special Power of Attorney written specifically for that purpose. Thus, as a general rule, it is important to check with any potential receiving agencies, people, or business prior to drafting a POA to see what types are accepted.

HOW TO USE A POWER OF ATTORNEY?

Your agent must know the proper way to sign for you. They should not sign your name; rather, they should sign their name and indicate that they are signing as your representative. Here are some examples of the right and wrong way to sign:

CORRECT:

BILL JONES, by his attorney-in-fact, MARY JONES

-OR-

MARY JONES, attorney-in-fact for BILL JONES

INCORRECT:

BILL JONES

In order to use the POA, your agent should have the original document because a copy usually is not acceptable. The agent should keep the original and make copies of the POA only when necessary.

HOW LONG DOES A POWER OF ATTORNEY LAST?

The POA itself should state how long it will remain in effect. Generally, the term can be for as long as the grantor likes, but it should be no longer than the minimum amount of time needed. By policy, the General Powers of Attorney and the Specific Powers of Attorney that the legal office drafts last a maximum of one year.

You may revoke a POA at any time by telling your agent that it has been revoked. You may wish to put your revocation in writing and keep a copy. Additionally, you should notify anyone who has dealt with your attorney-in-fact in the past of the revocation. Lastly, it is best practice to get back the original copy of the POA.

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