

# MINNESOTA ARMY NATIONAL GUARD

## Will Questionnaire

Revised May 2011

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### **PRIVACY ACT STATEMENT**

AUTHORITY: 10 U.S.C. 1044, 8013, 8067(g).

PRINCIPLE PURPOSE: To aid in the preparation of your estate documents.

ROUTINE USE: The Minnesota Army National Guard Office of the Staff Judge Advocate will use the information you provide in preparing your estate documents. Information disclosed is considered confidential and will not be disseminated outside the legal office.

DISCLOSURE IS VOLUNTARY: You are not required to complete this form; however, failure to disclose information may preclude successful completion of your legal documents.

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### **INSTRUCTIONS**

**Step 1:** PLEASE PRINT LEGIBLY or click on the grey box and begin typing or on the enclosed Will Questionnaire and return the completed form to the Minnesota Army National Guard Office of the Staff Judge Advocate (MNARNG OSJA). Write in the margins or attach a continuation sheet if necessary. **Please ensure that all requested information is provided** (e.g., full names, complete street addresses). Priority is given to deploying military personnel. The legal office will send you the draft for your review.

**Step 2:** Review the estate documents carefully. The “plain English” definitions of many legal terms used in the estate documents are provided below for your convenience. (Keep the first four pages on file for future reference.) Make any changes or corrections on the draft version of the documents and return the edits to the legal office. You are encouraged to contact the legal office if you have any questions or concerns.

**Step 3:** MNARNG OSJA at (651)282-4915 to schedule an appointment with an attorney, and to execute your Will and Advanced Directives. Note that your estate documents are not effective until you sign them in the presence of a Notary Public and two (2) witnesses who are not related to you and are not named in your documents. The MNARNG OSJA will provide the notary and witnesses for you.

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### **ATTENTION MARRIED PERSONNEL**

Our office will draft estate documents for married couples. Each spouse must complete and submit his/her own Will Questionnaire. It is strongly recommended that spouses complete their Questionnaires together and discuss their answers so that differences between their documents are minimal. In cases where spouses have conflicting interests or estate planning objectives, the legal office recommends the non-military spouse seek outside counsel.

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### **DEFINITIONS**

“**Bequest**” is a gift of personal property made under your will.

“**Codicil**” is a supplemental legal document that modifies or explains provisions of your will.

“**Devise**” is a gift of real property made under your will.

“**Estate**” is the total property of whatever kind that is owned by a decedent prior to the distribution of that property in accordance with the terms of a will, or when there is no will, by the laws of the state of domicile.

“**Guardian**” is the person you nominate to raise your minor children should your children's other parent predecease you or is unwilling or unable to act. Many clients nominate their trustee to be their children's guardian.

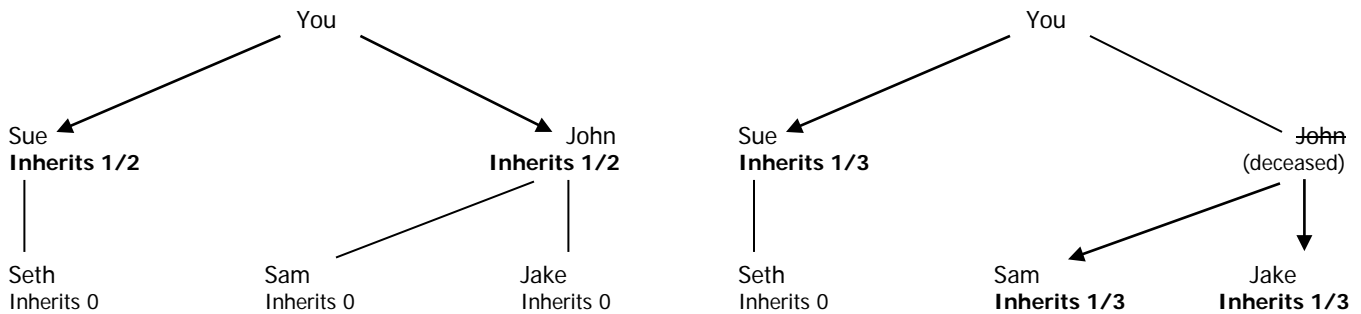
The court will appoint a Trustee after guardianship is determined. In some cases, particularly in blended families, it may be appropriate to nominate a different guardian for each child.

**“Health Care Directives”** (also called **“Advanced Directives”** or **“Advanced Medical Directives”**) are written documents that inform others of your health care wishes. You must be at least 18 years old to make a health care directive. Advance directives are important if your attending physician determines you cannot communicate your health care choices because of physical or mental impairment, and if you wish to have someone else make your health care decisions. Health care directives include **“living wills”** which give specific directions regarding the termination of life support in the event of a terminal, incurable medical condition. A **“durable power of attorney for health care”** appoints a trusted person to make medical decisions in the event of incompetence or inability to communicate decisions or desires.

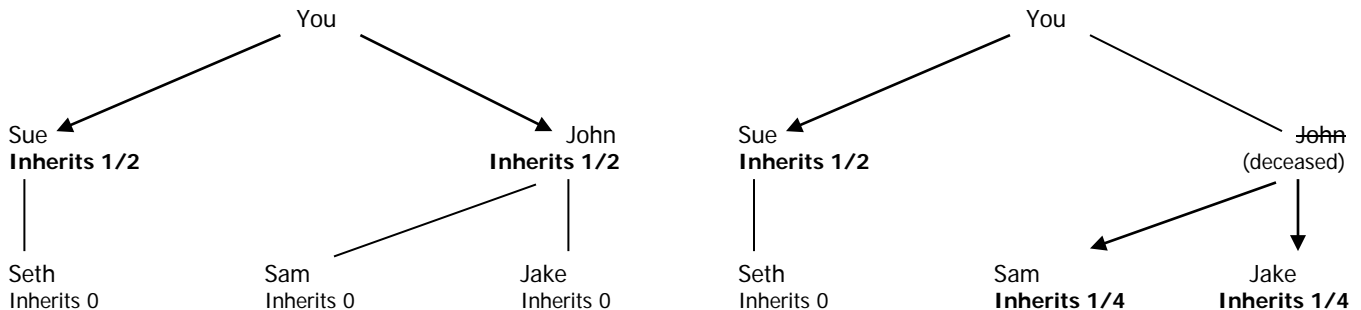
**“Heirs”** are those who inherit property, whether real property or personal property, by will or by state law when there is no will.

**“Issue”** means your direct descendants - your children, grandchildren, great-grandchildren, etc. Legally adopted children and grandchildren are included, unless the will expressly excludes them.

**“Per capita”** describes the way a gift is divided among your descendants whereby each of the surviving descendants share equally, regardless of generation. A per capita distribution means that if a child has died, that child’s share is divided among the other living beneficiaries. For example, presume that you have two children (Sue and John) and that you gift your property to your children per capita. If all two children survive you, each would get one-half of the property (the diagram on the left shows this distribution). If John predeceased you, however, his share would be divided equally by the surviving descendants (the diagram on the right shows this distribution).



**“Per stirpes”** describes the way a gift is divided among a person's descendants whereby each surviving descendant receives only the amount that his/her immediate ancestor would have received if that ancestor had been alive at the time of the testator’s death. A per stirpes distribution means that if a child has died, that child’s share is divided among his/her living descendants. For example, presume that you have two children (Sue and John) and you gift your property to your children per stirpes. If both children survive you, each would get one-half of the property (the diagram on the left shows this distribution). If, however, John has died, his one-half share would be divided among his living children (the diagram on the right shows this distribution).



The following examples will further illustrate the distinction between per capita and per stirpes. The final example introduces and explains a related term, by representation.

- A. **Per stirpes**. A distribution per stirpes means that the beneficiary is entitled to the share of the estate that his or her deceased ancestor would have received had that ancestor lived. If a bequest is made to your four children (A, B, C and D) per stirpes, and all your children survive you, the bequest will be divided into four equal shares and each child will receive 25% of your bequest. If one of your children predeceases you (let us say it is Child A), leaving two surviving children, A1 and A2, then A1 and A2 will divide the 25% share that their deceased parent, A, would have received had the parent lived. In this situation, A1 and A2, your grandchildren, will each receive 12.5% of the bequest. If a second child (let us say it is Child C) also predeceases you, but leaves only one surviving child, C1, then C1 will receive the entire 25% share that his or her parent, C, would have received had the parent lived. Your two surviving children, B and D, will each receive 25% of the bequest.
- B. **Per capita**. A distribution per capita means that all the surviving beneficiaries, regardless whether child, grandchild, etc., receive an equal share of the bequest. If a bequest is made to your four children (A, B, C and D) per capita, and all four children survive you, the bequest will be divided into four equal shares and each child will receive 25% of the bequest. If, however, as in the last example, A predeceases you, leaving two surviving children, A1 and A2, and a second child, C, predeceases you as well, leaving one surviving child, C1, then all five beneficiaries would be affected by the per capita distribution. In this situation, there are two surviving children, B and D, and three surviving grandchildren, A1, A2 and C1. The bequest would be divided into five equal shares and each beneficiary, whether child or grandchild, would receive 20% of the bequest.
- C. **By representation**. A distribution by representation achieves a hybrid result, in that each generation of beneficiaries will share the bequest equally. If a bequest is made to your four children (A, B, C and D) by representation, and all four children survive you, the bequest will be divided into four equal shares and each child will receive 25% of the bequest. If, however, as in the previous examples, A predeceases you, leaving two surviving children, A1 and A2, and C also predeceases you, leaving one surviving child, C1, then the by representation designation would change the share of the bequest that each beneficiary would receive. Here, A and C would have each received 25% of the bequest had he or she survived you. The 50% share that A and C would have received is now divided equally among your three grandchildren, A1, A2 and C1, with each grandchild receiving a 16.66% share. Your two surviving children, B and D, will each receive 25% of the bequest.

**“Personal representative”** is the person who will collect your assets, pay your taxes and debts, and distribute the remaining property to your heirs. Many clients nominate their spouse to be their personal representative.

**“Power of Attorney”** is a written document that gives someone else the legal authority to handle financial and other matters for you.

**“Residue”** is what remains of an estate after all the debts, taxes, and costs of administration have been discharged, and all the bequests and devises have been satisfied.

**“SGLI”** (or Servicemembers’ Group Life Insurance) is a group term life insurance for members of the armed forces, purchased by the government from private insurers, and partially subsidized by the government. Military members on active duty, active duty for training or inactive duty for training, and members of the ready reserve are eligible for insurance through this program and are automatically covered by SGLI unless they decline the coverage in writing. SGLI is available for the member in \$50,000 increments up to a maximum of \$400,000. For more information, it is highly recommended that you consult the SGLI trifold brochure prepared by the base legal office or visit the Military Personnel Flight’s Customer Service Section.

**“Testator”** is one who has made a will, or dies leaving a will. Testator can apply to both male or female individuals, although you will still see the term **“Testatrix”** which applies to females only.

**“Trust”** is created by the transfer of property by the owner to another person (the “trustee”), who then manages the distribution of your assets. A **“testamentary trust”** is created by a will after a person’s death. Oftentimes, it is an account into which your children’s inheritance will be kept until the children are old enough to spend their inheritance responsibly. (You can specify the age that your children will be eligible to receive their inheritance.)

**“Trustee”** holds the title to the property and manages the property for the benefit of the designated beneficiaries who may be a specific person, a group of people, or an organization. The trustee has a duty to manage the trust’s assets in the best interests of the beneficiaries. Frequently, it is the person who has the duty and authority to spend money from the trust on your children’s education, health and support. When your children reach the age you designated, your children will receive their inheritance and will be able to spend it as they wish. In situations where your children will have different guardians, it may be appropriate to have a separate trust. The person you nominate to be your children’s guardian may also be your trustee.

**“Uniform Gift to Minors Act”** and **“Uniform Transfer to Minors Act”** are uniform acts adopted by most states providing a means of transferring property to a minor. The designated custodian of the property has the legal right to act on behalf of the minor without the necessity of a legal guardianship. The custodian has a fiduciary responsibility to manage the money in a prudent fashion for the benefit of the minor during the period of time the child remains a minor. Generally, the custodian possesses the right to change investments, apply the income from the custodial property to the minor’s support, and even terminate the custodianship. During the period of the custodianship, the income from the property is taxed to the minor. The custodianship terminates when the minor reaches legal age (most UGMAs end at age 18; most UTMA’s end at age 21). Custodial accounts are most often established at banks and brokerages.

**“Will”** is a legal document that allows you to transfer your property at your death.

# WILL QUESTIONNAIRE

**PERSONAL INFORMATION.**

Client's Status: \_\_\_ Deploying \_\_\_ Home Station \_\_\_ Military Spouse \_\_\_ Retired Military

My full legal name is: \_\_\_\_\_  
First Middle Last

My address is: \_\_\_\_\_  
Street City State Zip

My **Legal** address (if different from above) is: \_\_\_\_\_  
Street City State Zip

My telephone numbers are: duty \_\_\_\_\_ home \_\_\_\_\_ work \_\_\_\_\_

My e-mail address is: \_\_\_\_\_

- O** I may be entitled to benefits as a result of military service. I want my Will to state that I am (Mark with an X):
- \_\_\_ in the military service.
  - \_\_\_ retired from the military service.
  - \_\_\_ married to a military member.
  - \_\_\_ married to a retired military member.
  - \_\_\_ the dependent of a military member.

**FINANCIAL INFORMATION.** (Note: This section is required to determine which tax laws will apply.) The value of my assets (including real property, personal property, and the balances of any bank accounts) plus the value of any policies of life insurance on my life, less my debts is:

- \_\_\_ Under \$500,000
- \_\_\_ Between \$500,000 and \$1,000,000
- \_\_\_ Over \$1,000,000\*
- \_\_\_ Over \$2,000,000\*\*

\* An estate with a value of over \$1,000,000 may be referred to a civilian attorney/estate planner.

\*\*An estate with a value of over \$2,000,000 will be referred to a civilian attorney/estate planner.

**FAMILY INFORMATION.**

I am: \_\_\_ single \_\_\_ divorced \_\_\_ remarried \_\_\_ married \_\_\_ a widow(er)

My spouse's full legal name is: \_\_\_\_\_  
First Middle Last

My children are (use full legal names): (Note: For status, use BC=biological current relationship; BP= biological prior relationship; S=stepchild; A=adopted.)

Name: \_\_\_\_\_ Birthdate: \_\_\_\_\_ Sex: \_\_\_\_\_ Status: \_\_\_\_\_

Name: \_\_\_\_\_ Birthdate: \_\_\_\_\_ Sex: \_\_\_\_\_ Status: \_\_\_\_\_

Name: \_\_\_\_\_ Birthdate: \_\_\_\_\_ Sex: \_\_\_\_\_ Status: \_\_\_\_\_

When defining "children", stepchildren and adopted children are to be: \_\_\_ included. \_\_\_ excluded. \_\_\_Do not include a statement about adopted children and stepchildren. \_\_\_ I have no children now, but children are anticipated.

**FAMILY-OWNED BUSINESS.** I want my family-owned business or farm to go to: (Note: Complete if applicable.)

my spouse.  
 someone else. (Note: complete "Primary" and "Alternate" below, adding additional recipients as necessary).

Primary: \_\_\_\_\_ Relationship: \_\_\_\_\_

Alternate: \_\_\_\_\_ Relationship: \_\_\_\_\_

The alternate will receive only if the primary is deceased.  The primary and alternate will receive equally.

**OR** I want my business to be given as follows: \_\_\_\_\_

My family-owned business is a:  corporation  sole proprietorship  partnership  LLC

The value of my family-owned business is less than half of my estate, or under \$1,300,000.

The family-owned business owns real property.

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**REAL ESTATE.** I want my real estate (e.g., my house and/or any land I own) to go to:

my spouse.  
 someone else. (Note: complete "Primary" and "Alternate" below, adding additional recipients as necessary).

Primary: \_\_\_\_\_ Relationship: \_\_\_\_\_

Alternate: \_\_\_\_\_ Relationship: \_\_\_\_\_

The alternate will receive only if the primary is deceased.  The primary and alternate will receive equally.

**OR** I want my real estate to be given as follows: \_\_\_\_\_

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**PERSONAL PROPERTY.** I want my personal property (e.g., my car, furniture, jewelry) to go to:

my spouse.  
 someone else. (Note: complete "Primary" and "Alternate" below, adding additional recipients as necessary).

Primary Recipient: \_\_\_\_\_ Relationship: \_\_\_\_\_

Alternate Recipient: \_\_\_\_\_ Relationship: \_\_\_\_\_

The alternate will receive only if the primary is deceased.  The primary and alternate will receive equally.

**OR** I want my personal property to be given as follows: \_\_\_\_\_

I also want to make a list of who is to receive certain items (i.e., my grandfather clock to my son; my antique bedroom set to my daughter, etc.) (Please attach)

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**CASH BEQUEST.** (Note: This section is optional.) I want to give \$\_\_\_\_\_ (must be a specific dollar amount) to

\_\_\_\_\_ (name), my \_\_\_\_\_ (relationship).

(Add additional recipients as necessary.) \_\_\_\_\_

**RESIDUE.** After my real and personal property have been distributed and any cash bequests have been made, I want the rest of my property to go to:

- my spouse.
- my spouse, then to my children.
- someone else. (Note: complete "Primary" and "Alternate" below, adding additional recipients as necessary).

Primary: \_\_\_\_\_ Relationship: \_\_\_\_\_

Alternate: \_\_\_\_\_ Relationship: \_\_\_\_\_

The alternate will receive only if the primary is deceased.  The primary and alternate will receive equally.

**OR** I want the rest of my property to be given as follows: \_\_\_\_\_

**PERSONAL REPRESENTATIVE.** The person who will collect your assets, pay your taxes and debts, and distribute the remaining property to your heirs. Many clients nominate their spouse to be their personal representative. I want the following person(s) to be my Personal Representative(s):

Primary: \_\_\_\_\_ Relationship: \_\_\_\_\_

Alternate: \_\_\_\_\_ Relationship: \_\_\_\_\_

The alternate is to act only when the primary is unable.  The primary and alternate must act jointly.

**TRUSTS** Oftentimes, it is an account into which your children's inheritance will be kept until the children are old enough to spend their inheritance responsibly. (You can specify the age that your children will be eligible to receive their inheritance. I want the following person(s) to be my Trustee(s) (add additional alternates as necessary):

Primary: \_\_\_\_\_ Relationship: \_\_\_\_\_

Alternate: \_\_\_\_\_ Relationship: \_\_\_\_\_

The alternate is to act only when the primary is unable.  The primary and alternate must act jointly.

My children can have the principal of the trust at age:  18  19  21  Other age: \_\_\_\_\_

**OR**

My children can have \_\_\_\_\_% of the principle at age \_\_\_\_\_ and the remaining \_\_\_\_\_% at age \_\_\_\_\_.

I want one trust for all of my children. (Note: If you choose this, your oldest child will only receive their share of the trust when your youngest child reaches the age you choose.)

**OR**

I want each child to have his/her own trust. (Note: This can be more expensive to maintain.)

(Note: If you wish your SGLI benefits to be included in this trust, insert the following language in the Contingent Beneficiaries Designation block of your SGLI form: "MY TRUSTEE TO FUND A TRUST ESTABLISHED FOR THE BENEFIT OF MY CHILDREN UNDER MY WILL." OR "THE PROCEEDS SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE INSTRUCTIONS IN MY LAST WILL AND TESTAMENT.")

**GUARDIAN.** I want the following person(s) to have custody of my children **upon my death if my spouse or the children's other parent does not survive me.** (Note: Add additional alternates as necessary):

Primary: \_\_\_\_\_ Relationship: \_\_\_\_\_

Alternate: \_\_\_\_\_ Relationship: \_\_\_\_\_

\_\_\_ The alternate is to act only when the primary is unable. \_\_\_ The primary and alternate must act jointly.

**ANCILLARY DOCUMENTS.** (Note: This section is optional. If completed, legal office staff will draft both a "Living Will" and an "Appointment of Health Care Agent" documents.)

\_\_\_ **Organ Donation.** I want to donate my organs and tissue:

\_\_\_ For transplantation only. \_\_\_ For transplantation, scientific or experimental purposes.

\_\_\_ **Health Care Directive (a/k/a "Living Will").** I want to leave binding instructions for my health care if I am in a terminal condition.

\_\_\_ If it does not burden my family, I would rather die at home than in a hospital or nursing home.

**Appointment of Health Care Agent.** I want someone to make health care decisions for me if I am unable to communicate with my doctors or if I am unable make the decisions for myself (add additional alternates as necessary):

Primary: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Alternate: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

\_\_\_ The alternate is to act only when the primary is unable. \_\_\_ The primary and alternate must act jointly.

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**BURIAL ARRANGEMENTS.** (Note: This section is optional.)

Upon my death, I want my body to be:

\_\_\_ cremated.

\_\_\_ donated for medical or scientific purposes. (Generally, remains are cremated after use.)

\_\_\_ buried at: \_\_\_\_\_  
Name of Cemetery City State

\_\_\_ I want to have full military honors at my memorial or graveside service.

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**POWER OF ATTORNEY.** (Note: This section is optional.) An attorney will assist you in determining whether a Power of Attorney is necessary.

\_\_\_ I plan to buy or sell real estate. The property is located at:

Address: \_\_\_\_\_  
Street City State Zip

The legal (physical) description of the property is: \_\_\_\_\_

I would like to give Power of Attorney to (grant to the attorney-in-fact any of the following powers, make a check or "x" on the line in front of each power being granted. You may, but need not, cross out each power not granted. Failure to make a check of "x" on the line in front of the power will have the effect of deleting the power unless the line in front of the power of (N) is checked or x-ed)

- \_\_\_ (A) real property transactions to include: (Best to use Special POA)
- \_\_\_ (B) tangible personal property transactions;
- \_\_\_ (C) bond, share, and commodity transactions;
- \_\_\_ (D) banking transactions;
- \_\_\_ (E) business operating transactions;
- \_\_\_ (F) insurance transactions;
- \_\_\_ (G) beneficiary transactions;
- \_\_\_ (H) gift transactions;
- \_\_\_ (I) fiduciary transactions;
- \_\_\_ (J) claims and litigation;
- \_\_\_ (K) family maintenance;
- \_\_\_ (L) benefits from military service;
- \_\_\_ (M) records, reports, and statements;
- \_\_\_ (N) all of the powers listed in (A) through (M) above and all other matters.

I would like to give Power of Attorney to:

\_\_\_ be effective if I become incapacitated or incompetent  
\_\_\_ not be effective if I become incapacitated or incompetent.

Primary Full Name (Attorney-In-Fact): \_\_\_\_\_

Address: \_\_\_\_\_  
Street City State Zip

Alternate Full Name (Attorney-In-Fact): \_\_\_\_\_

Address: \_\_\_\_\_  
Street City State Zip

\_\_\_ The alternate is to act only when the primary is unable. \_\_\_ The primary and alternate must act jointly.

I would like the Power of Attorney to expire on: \_\_\_\_\_.  
Date