

**Please call the Legal Assistance Office for an appointment (301)619-2221/2065**

**Directions: Enter the Main Gate (7<sup>th</sup> Street), take an immediate left turn onto Porter Street, take your third right onto Fraim Street. We are located on the left side in front of the water tower, Bldg 521.**

#### **ESTATE PLANNING INFORMATION**

**ESTATE PLANNING** has a lasting effect on you and your family. What you do now affects what they may have after you die. Your plan may include one or more of these: Will; Advance Medical Directive (“living will”) ; Durable Power Of Attorney for Health Care; Durable Power Of Attorney in case of incompetence; Life Insurance; a trust (possibly in a will); a Letter of Instruction, and an anatomical gift designation (often on your driver’s license).

A properly executed will leaves instructions to a probate court about your intended property distribution. It may provide simple instructions or may contain a trust. **A will is especially important for parents with young children.** In this situation, you should name a guardian (and preferably a backup) for your children in case the natural parent also dies while the children are minors. You may name a trustee to manage your property and properly invest on behalf of your children until they attain the age of majority (21). Consider carefully who you trust with these important duties. You should also discuss your wishes with all of those named to ensure that they know that you named them, and what your desires are.

You must plan carefully and that requires you think about your situation, family, and desires. **If you are active duty military, don’t wait until the SRP to consider this important matter.** Do so now while you have the time to reflect.

For more information about preparing your will read the Federal Consumer Information Center’s Life Advice publication, *Making a Will*, [http://www.pueblo.gsa.gov/cic\\_text/money/will/makewill.htm](http://www.pueblo.gsa.gov/cic_text/money/will/makewill.htm).

This questionnaire will help you organize the information that your legal assistance attorney needs to advise you and prepare your estate plan. Some individuals need very complex plans that may require you obtain assistance beyond what is available in your local legal assistance office. Your legal assistance attorney will advise you if that is necessary in your case.

Getting Started. You and, if married, your spouse, should read the attached questionnaire. Please bring your completed personal and financial questionnaire with you when you consult with your attorney.

#### **NOTE:**

**1) If both husband and wife have similar estate plans complete one questionnaire together and sign the attached Joint Representation Memo.**

**2) If either spouse was previously married (children by a prior marriage) you will need to complete separate questionnaires and sign the attached Joint Representation with Separate Families Memo.**

**MEMORANDUM TO Joint Representation Clients**

1. It is commonplace for spouses to engage the same firm for estate planning. However, when this office represents both spouses with regard to common or related matters, certain conflicts of interest can arise within the ethical codes of the legal profession.

2. This is to confirm that our office is to represent you jointly as husband and wife. As such:

a) We will not maintain confidentiality between the two of you; the information we receive from either of you or from third parties will be shared with both of you.

b) Each of you waive any objection to our representation of the other regarding potential conflicts of interest between you (such as involving spousal rights of election, property ownership and transfer matters, and trust as well as other asset arrangement matters).

3. Joint representation is appropriate in our experience. However, strict ethical requirements dictate that we thoroughly disclose the ethical ramifications.

4. Please sign below to indicate your acknowledgment of these terms.

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

BRETT C. CONYERS  
Attorney-Advisor  
Legal Assistance Office

## MEMORANDUM OF UNDERSTANDING

SUBJECT: Joint Representation **Clients with Separate Families** for Estate Planning

1. It is commonplace for spouses to engage the same attorney for estate planning. However, when a legal assistance attorney represents both spouses with regard to common or related matters, certain conflicts of interest can arise within the ethical codes of the legal profession. This is especially true when providing estate planning for your respective separate families.
2. Matters to which such representation likely will extend include the following:
  - a) Analysis of your wills, trusts, and property agreements, if any.
  - b) Analysis of the assets owned by each of you, including consideration of their value and the nature in which title is or should be held, and the categorization of such assets as separate or community property.
  - c) Discussions about the manner in which you wish to dispose of such property and whether there exists a moral obligation to provide for minor children.
  - d) Analysis of the tax impact of such disposition and recommendations relative thereto.
  - e) Preparation of the documents necessary to accomplish the desired disposition.
3. Differences may arise between spouses with respect to the ownership of your property and its desired disposition, particularly in view of your respective separate families. **For this reason, it is advisable that spouses with separate families obtain independent legal counsel.** Seeing independent legal counsel will prevent the possibility that advice to one spouse will be influenced by representation of the other. One spouse may choose to engage the Fort Detrick Legal Assistance Office and the other may seek representation at a neighboring military installation's legal office.
4. Such differences, under our ethical rules, do not prevent the same legal assistance attorney from continuing to represent both of you unless there is an *actual* conflict. If you conclude there is no actual conflict, a legal assistance attorney may represent both spouses. However, if an actual conflict arises after the initial interview, be advised that the attorney cannot continue dual representation. Ethical rules require the attorney to withdraw from representing either spouse and advise both of you to obtain independent legal counsel.
5. Dual representation also impacts an attorney's duty to protect information as confidential. In undertaking dual representation, both spouses and the attorney must have an understanding that there will be a complete and free disclosure and exchange of all information between attorney and client notwithstanding both spouses being present in a

conference. You must agree that the information that the attorney receives from either one or both of you in the course of his/her representation shall not be confidential between the spouses regardless of whether the attorney obtains such information in conferences with both of you or in private conferences with only one of you.

6. Assuming you are satisfied with the foregoing explanation, please sign below (1) expressing your consent to dual representation and (2) waiving appropriate waivers. Bring the consent form with you for your appointment.

Sincerely,

BRETT C. CONYERS  
Attorney-Advisor  
Legal Assistance Attorney

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I have read the foregoing memorandum and (understand the same) (have written my questions on the back).

a) I consent to the disclosure and exchange of all information received by my legal assistance attorney from either one of us with the other one of us; I agree that my legal assistance attorney will not maintain confidentiality between my spouse and me; I agree the information the attorney receives from either of us or from third parties may be shared with both of us.

b) I understand that advice to me may be influenced by representation of my spouse; I consent to the same legal assistance attorney representing both my spouse and me in the aforementioned estate planning services; I waive any objection to my legal assistance attorney's representation of my spouse regarding potential conflicts of interest between us (such as those involving spousal rights of election, property ownership and transfer matters, and a moral obligation to support my minor children that are not my spouse's children).

c) I understand that the attorney may choose to withdraw from dual representation if an actual conflict arises and such withdrawal will require both spouse to seek independent representation for estate planning.

Husband's Name: \_\_\_\_\_ Wife's Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

## WILL TERMINOLOGY

**I. WHY SHOULD I MAKE A WILL?** If you die without a valid will, the laws of your domicile or state of legal residence determine what happens to your property. Your state of domicile may or may not be the state where you die. Without a will, your wishes may not be considered.

**II. WHAT IS A WILL?** A will is a legally effective declaration of a person's wishes as to the disposition of their property upon their death. It must be executed with the formalities required by statute. The provisions of a will do not take effect until after the death of the maker.

**III. LEGAL RESIDENCE (DOMICILE):** The state you consider your permanent home and to which you have every intention of returning. When you die, the laws of your state of domicile will be used to interpret and implement your will. For military members, your domicile is often your legal residence (e.g., your home of record), not the place you are currently living.

**IV. IS ALL OF MY PROPERTY CONTROLLED BY MY WILL WHEN I DIE? No!** For example, proceeds of life insurance policies (including SGLI) are distributed as you designated in the insurance policy, and property that you own jointly with another person will normally go to the other joint owner. Likewise, certain bank accounts which are payable on death go directly to the beneficiary. Property passed to beneficiaries in these ways avoid the probate proceeding.

**V. WHAT IS YOUR PROPERTY:** 1) **What is personal and tangible property?** Property which is moveable. 2) **What is real property?** Property that has a fixed location, such as land or a house. 3) **Disposition of property:** You can dispose of your property any way you wish, although state law may give your spouse and/or children a right to a portion of your property regardless of your stated intentions. You can give away property item by specific bequests or all to one person or a group of persons equally. Many married persons leave all their property to their spouse, and, if their spouse predeceases them, then to their children.

**VI. WHAT IS YOUR ESTATE:** All property, real and personal, in which a person has an interest, such as money, savings accounts, stocks, house, furniture, insurance policies, etc. **WHAT DOES RESIDUARY ESTATE MEAN?** Your residuary estate is whatever property remains after paying debts and expenses of administration, and any specific bequests. Because many people do not make specific bequests, the "residuary" usually describes all the property left to your beneficiaries.

**VII. SPECIFIC BEQUESTS:** You may make specific gifts of cash, real estate, or personal property to specific people or charities in your will. For a number of reasons, these bequests are discouraged. These bequests will be distributed first and may deplete your estate. Specific bequests may complicate the probate of your estate if the property given cannot be found at your death. Therefore, if you make any specific bequests, you should only give property or amounts of cash that you are almost certain you will have when you die. If you make no specific bequests, all of your property will pass to your primary beneficiaries. Many states allow you to make a "personal memorandum," in which you can give specific items of personal property to named beneficiaries in writing separate from your will. While in most states memorandum gifts are not legally binding, your executor will give these gifts as much weight as state law allows.

**VIII. PROBATE:** Probate is a court administered procedure for settling your estate as provided in your will or under state law. Probate involves petitioning a court for letters of appointment, settling creditor claims, finding and distributing assets, filing any necessary tax returns and the guardianship of children, etc. There are often some fees and costs associated with probate procedures. These costs come out of your estate.

**IX. PERSONAL REPRESENTATIVE:** A personal representative or executor is a person that you name in your will to carry out your desires, as expressed in your will, and to settle your estate. Settlement includes paying, from your estate, any taxes and debts you may owe. Many married people name their spouse as their personal representative. Your personal representative will have an important role and it should be someone you trust. Any adult may serve as your executor, although **many states prefer or require an executor who is a legal resident of the state where probate is conducted.**

**X. METHODS OF DISTRIBUTION:** 1) **Per Stirpes** is a method of distribution whereby the descendants of a beneficiary receive that beneficiary's share of the estate if the beneficiary has died before the estate is distributed. 2) **By Survivorship** distributes the share of a deceased beneficiary to the surviving members of the group.

**XI. GUARDIAN:** A guardian is the person who is responsible for caring for the person and/or property of a minor child. If your children are minors when you die, and if the other natural parent is not alive or for any reason cannot act as guardian, the court will normally appoint the person(s) you name to act as legal guardian(s) of the children. The guardian(s) named will have physical control and custody of the children until they reach age 18. If you are comfortable appointing an individual as guardian of your children, but not their property, you may appoint a different individual to be responsible for the property of the children. If you are divorced, remember the court will usually appoint your former spouse to be the guardian (as the children's other natural parent) even if you provide otherwise in your will. You should still name a guardian, however, in case your former spouse dies before you or for any reason cannot act as the guardian.

**XII. LEAVING PROPERTY TO MINOR CHILDREN:**

1) You may leave your property to your minor children in the care of a custodian (**almost always the Guardian of the children**) named under the Uniform Transfer to Minors Act (**UTMA**) to manage the property of the children until they reach the age of 21. The custodian you appoint establishes an UTMA account for each minor. Like a trustee, the custodian will be charged with administering the funds for the benefit of your children. Unlike a trustee, the custodian's duties and responsibilities are defined in state law rather than in your Will. 2) You may leave your property in **TRUST** for the benefit of your minor children until they reach an age older than 21. A trust is similar to a bank account that you create for your children; the property you leave to your children automatically goes into it if you establish one. When your children reaches a certain age that you specify in your will, all the money that remains in the account is distributed to the children, in equal shares. You appoint a "trustee" who is legally responsible for the account to watch over the account and distribute money to your children. A disadvantage is that the trust must earn enough money to pay accountants, financial advisors, and lawyers. In addition to these costs, a trust costs your trustee a lot of time and energy. **Generally, it is not a good idea to set up a trust unless you have substantial investments and life insurance proceeds to leave to your children.**

**XIII. FINANCIAL INFORMATION SHEET:** Property may not be controlled by a will at your death. Investments may be transferred by law or by a contract. To assist the attorney in discussing such non-testamentary transfers, please complete the attached Financial Information Sheet *jointly* before seeing counsel.