**WHY SHOULD I HAVE A WILL?**

**WHAT IS A WILL?**

A will is a written legal document providing for the disposition of your probate estate according to your wishes, at the time of your death. Your probate estate consists of all the property and personal belongings which you own or are entitled to possess at the time of your death that are not disposed of by other means, such as an insurance contract or a pay on death provision in a bank account.

**WHO NEEDS A WILL?**

Most persons who have an estate need a will. You have an estate if you own a home, car, items of sentimental or financial value, or maintain a bank account. While the intestate succession laws of each state provide for distribution of your property in the absence of a will, this distribution may not reflect your wishes. Further, you can provide for special circumstances in your will that would go unheeded otherwise, such as naming a guardian and a trustee or custodian for your minor children and the property you leave to them at your death; naming your executor to manage your estate; establishing trusts for minor children or incapacitated persons; passing property to friends who are not heirs; and the list goes on.

**WHAT HAPPENS IF I DIE WITHOUT A WILL?**

When a person dies without a will the property of the deceased is distributed according to a formula fixed by state law (intestate succession). In other words, if you do not have a will, the state you are a legal resident of at the time of your death will determine how your property is divided (in accordance with the intestate laws of that state). In some cases, the intestate laws will comply with your wishes. In many cases, they will not.

**WHY IS IT ESPECIALLY IMPORTANT TO HAVE A WILL IF I HAVE MINOR CHILDREN?**

From a legal perspective, most people with minor children should have a will. It is important for parents to be able to designate who they would like their children to live with in the event of their deaths. If this is not designated in a will, the court is left to make that determination. Naming a guardian simplifies the process of having a guardian appointed by the court (in accordance with your desires) and can save the expense of posting a bond. Additionally, it is important to designate a custodian or trustee to manage the children’s property until they reach the age of majority or another age so designated in the will. The actual trust or custodianship for your minor children can also be established in the will. A trust or custodianship ensures that money from the estate can be used for the benefit of your children and provides a mechanism for holding and administering money ‘poured-over’ from life insurance policies left to your minor children. Leaving money directly to a relative or trusted friend to provide for minor children, rather than establishing a trust or custodianship, can cause unforeseen problems. For instance, if the beneficiary friend or relative becomes incompetent, they may not be able to distribute that money. Also, there would be no legal duty to use that money for the benefit of your children if left to a friend or relative outright. Finally, if you leave money to that friend or relative outright, the money can become subject to the debts of the person named – including fees and debts resulting from lawsuits against them.

**CAN LEGAL ASSISTANCE DRAFT A WILL FOR ME?**

Our Legal Assistance Office is available to prepare simple wills for our eligible clients. If you have a substantial estate, or would like to establish a trust other than a trust for minor children, you may need the services of a civilian attorney who specializes in estate planning.