

# SETTLING THE DECEASED SERVICE MEMBER'S ESTATE

**T**his section describes what surviving family members need to know in order to settle the estate of the deceased service member. The “estate” covers anything, including real property (such as real estate) or financial assets, that the service member owned at the time of death. The manner in which an estate is settled is governed principally by the laws of the state of the deceased service member’s legal residence. The state of legal residence is not necessarily the same as the service member’s “home of record”. As a general rule, the state of legal residence is where the deceased service member had his or her permanent home. Indications of a legal residence include the state the service member used as a residence for state income tax purposes, the state where the service member was registered to vote, and the state where the service member owned property. What follows is a summary of general principles only; surviving family members must consider retaining their own lawyer to advise on specific situations in this context. Please see the section on Legal Assistance for guidance on finding and retaining a lawyer.

## Jointly Held Property

*What happens to property or assets that were owned together by the deceased service member and a surviving family member?*

Some assets, including bank and brokerage accounts and real property (i.e., houses and condominiums), are held by two or more persons, such as a husband and wife. In many cases these jointly held assets, such as joint bank accounts or jointly owned homes, provide for the surviving joint owner to become the sole owner automatically upon the death of the service member. This type of ownership is called “joint ownership with rights of survivorship”.

*What is the effect on property held jointly with a right of survivorship if the deceased service member left behind a will?*

None. Ownership of these items passes automatically to the surviving joint owner, so they are not governed by a will.

*How does a surviving family member change the formal ownership title of assets that pass through a right of survivorship?*

Surviving family members who receive bank accounts, real property, and other private assets as beneficiaries and wish to keep them in their current accounts should inquire about whether the names listed as the account holders or owners need to be changed. For real estate, surviving family members should contact the county clerk where the property is located and inquire about whether and how the name on the title of the property needs to be changed. The section on Personal Finance contains a further discussion on the transfer of ownership of assets.

## Designated Beneficiaries

*What does it mean if the deceased service member designated a “beneficiary”?*

When the deceased service member signed up for many military-sponsored programs, the forms gave the service member the option of designating a person, known as the beneficiary, to receive those assets in the event of death. These programs include military-sponsored life insurance and benefit plan programs like the death gratuity, Survivor Benefit Plan (SBP) and Thrift Savings Plan (TSP).

Additionally, a service member usually designates a beneficiary to receive any final pay, unpaid leave and unpaid installments of a reenlistment bonus. The Casualty Assistance Officer (CAO) should have access to the forms the service member used to designate beneficiaries of military-sponsored assets.

*What effect does a will have on the distribution of these assets?*

None. These items are distributed automatically to the designated beneficiaries, so they are not considered part of the decedent’s estate and a will has no effect on their distribution.

## Distributing Assets According to a Will

*How will any remaining assets be distributed?*

If the service member died with a valid will in place, the distribution of the remaining assets will be made according to the instructions in the will. In community property states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin), real estate and possessions are generally considered to be owned equally by each spouse. In those states, a will cannot dispose of the surviving spouse’s equal share, but only the decedent’s half of the community property.



*What should surviving family members do if there is a will in place?*

First, the surviving family member should consult the attorney who prepared the will. If the will was prepared with the assistance of a military Legal Assistance Officer, the Legal Assistance Office will assist in the settlement of the estate or will refer surviving family members to a civilian lawyer. Please see the section on Legal Assistance for information on finding and hiring a lawyer.

*How are the instructions in the will carried out?*

The will should name an executor, who has the responsibility of safeguarding and collecting the decedent's assets for distribution according to the will. The executor pays the decedent's debts and taxes first and then distributes the remaining assets according to the will.

The executor must "probate" the will by filing it, along with supporting evidence of its authenticity and a death certificate, in the local court with jurisdiction over wills and estates. This is often called the probate court or, in some states, the surrogate's court. Once the court reviews the will and any other necessary documentation, the court grants the executor the official power to collect the assets and to make the distributions under the will.

*Who might have a copy of the will?*

Surviving family members should check with the Legal Assistance Office that served the service member's unit. Service members who deploy on active duty are strongly encouraged to prepare a will and military Legal Assistance personnel often assist them. The Legal Assistance Office may be aware of whether the decedent prepared a will and may also know the will's location. Military Legal Assistance personnel may not have kept a copy, however.

Surviving family members should also check with any private attorney who may have prepared the will or look in a safety deposit box for the original or a copy. If the original cannot be found, sometimes a copy of the will can be used for probate purposes.

## **Distributing Assets in the Absence of a Will**

*What if the service member did not leave behind a will?*

A person who does not have a valid will at the time of death is said to have died "intestate". That person's personal property is divided according to the intestacy laws of the state where the decedent resided, while real property (i.e., real estate) is distributed according to the intestacy laws of the state where the property is located. In addition, if a valid will does not address distribution of all of the deceased service member's property, the remaining property will be distributed according to the applicable intestacy laws. Generally, the intestacy laws provide for a surviving spouse, children, or parents to receive the assets.



In some cases a person's legal residence, or "domicile", can be different from the place where the person last lived. The domicile controls which state's law governs the distribution of personal property.

Determining the decedent's domicile for probate purposes is a legal question governed by state law, and it can differ from state to state. A reasonable guideline is that a decedent's domicile corresponds to the decedent's permanent address and not to a temporary location or station. The Legal Assistance Office can help identify resources to research the intestacy laws or assist in finding a lawyer.

*How are the service member's assets distributed if there is no will?*

An administrator of the service member's estate will be appointed by the court to distribute the assets of the estate pursuant to the governing intestacy laws and to pay any outstanding debts, such as bills, loans and taxes. The administrator will be selected according to state law, usually in the following order so long as the person is at least 18 years of age:

- (1) The decedent's surviving spouse;
- (2) The decedent's children;
- (3) The decedent's parents; or
- (4) The decedent's brothers or sisters.

Like an executor, an administrator usually files a document, along with the decedent's death certificate, in probate court. Once the probate court has given its approval, the administrator can distribute the assets of the estate according to the laws of intestacy.

