

# Unique Requirement for Single Parent Soldiers

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### **Unique Requirement for Single Parent Soldiers**

The military expects single parents to have a plan in place, designate a guardian for their children, and make appropriate provisions in their Last Wills and Testaments and Trusts if any.

Failure to plan ahead can result in costly litigation. In one of my early cases, both parents were military and had designated guardians who were caring for their children while they were away on deployment. Unfortunately, but parents died, and they had failed to make any provisions, financial or otherwise, for this eventuality. Both of their sets of parents attacked the right of the current guardians to continue and challenged each other for custody of the children in the courts of New York City. The cost of the litigation was extraordinary, reaching six figures, but even worse was the effect on the children, who were being torn hither and yon. Had the military parents planned ahead, all of this could have been avoided and the children could have stayed with the family that had been caring for them and considered them part of the family.

Another issue that arises if the parents fail to make provisions for guardianship of minor children is which state's laws will control? In one case, the spouse was German, and the soldier was stationed in Germany when they died in an automobile accident. Her parents brought suit under German law in the courts of Nuremberg, Germany. His parents were from New Mexico and argued US law should apply. The back and forth became extremely expensive, with the German court eventually awarding custody to the guardian designated in the spouse's

Testament or German Will since that was where the children were living at the time of the parents' death. The mother then allowed the children to travel to New Mexico to visit their grandparents, who immediately filed for change of guardianship, which was awarded by the NM court based on the soldier's Will. This was still in litigation eight years later when the youngest child turned 18 and the court ruled the issue moot.

Remember, if you leave the issue ambiguous or fail to address it at all, the priority right of appointment will be determined under some state's laws. In the above example, had both the soldier and spouse designated the same guardians, this issue could have been readily resolved. The New Mexico court ruled that its decision was controlled by the soldier's Will. Had he designated the same guardians as his spouse, the ruling would have been much different.

### **Family Care Plan for Deployments or Unaccompanied Overseas Assignments**

The military requires single soldiers or joint military couples to have a family care plan in place should they need to be deployed or sent on unaccompanied assignments. Be familiar with the requirements of the service involved to ensure all requirements are met. Failure to do so can result in almost immediate discharge.

### **Should a Soldier's Family be Concerned about Probate Avoidance?**

What happens when a soldier dies? State law controls, but which state law?

And how important is it for the soldier's estate to avoid probate when the soldier dies?

A common turn of phrase is "Where There's a Will, There's a Probate." This isn't necessarily so. There are different ways to avoid probate, some of which are discussed below:

1. Joint Tenancy with Right of Survivorship – one common way to avoid probate for married couples is to structure their estates as joint tenants with the right of survivorship. This means when one spouse dies, the other becomes the sole owner of the asset. This type of planning is available for different types of assets:
  - Bank accounts
  - Investment Accounts
  - Vehicles
  - Savings Bonds
  - Real Property

Be sure to check deeds and source documents carefully – far too many probates occur because of a failure of the required language

2. Transfer on Death Deeds – these are available in some jurisdictions, so be sure to check state law to see if they work in the current state of residence or domicile. In Oklahoma, these TOD transfers are



available for real property interests and motor vehicles.

3. Payable on Death Accounts – this option is available for most bank accounts. Even if the account is owned by a married couple as a joint account, it is always a good idea to have a POD designation should both spouses die before a change can be made.
4. Transfer on Death Accounts – similar to the above, but primarily for investment accounts.

But what if property is owned in more than one state. In a case involving an Air Force Colonel, we wound up having to file a primary probate in Oklahoma and ancillary probates in South Dakota, Nevada, Maryland, and Texas because he had acquired multiple properties which he converted to rentals each time he was reassigned. Even though he was married, he always went to each assignment first to secure housing and never bothered deeding the homes to his wife as joint tenants. Before everything was settled, it was many years and many thousands of unnecessary dollars.



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