MAKING YOUR WILL
California State Aids Legal Services Association
(SALSA)
Legal Services for Persons with HIV Infection

TAKING CARE OF YOUR LEGAL AFFAIRS

A diagnosis of HIV infection is a shattering experience for anyone. It changes your life—makes you ask questions you've never asked. And it forces you to pay attention to matters you may have taken for granted or simply avoided: matters like your health, relationships, living situation, or what happens when you die.

But it can also be an opportunity to take charge of your life and to make your own decisions about issues that are important to you, such as who will take care of your pet, who will receive your property, who will become the guardian of your child, or who will arrange your funeral after your death.

You need to plan for the future, regardless of your health, age, or assets. You need to make your own decisions about living and dying, and not simply allow others—a physician, judge, or distant relative—to make these critical and personal decisions for you.

But if you have a life-threatening illness you must make these decisions early. Through a document called a Durable Power of Attorney for Health Care, you may invest in someone else—a lover, spouse, close relative, or trusted friend—the right to make decisions about your medical care. Through a
general power of attorney you may authorize someone to manage your financial affairs on your behalf. And through a Will you may make binding instructions on how your property will pass after your death. Your local SALSA organization can help you prepare all these documents.

WHAT IS A WILL?

A Will is a legal document that governs how your property and assets will be distributed at your death. An AIDS legal service attorney can work with you on setting up a simple Will, that is, a Will without trust provisions. The attorney will draft a formal document that sets out your specific instructions on how you wish your property to be distributed. This Will is then signed before two or more witnesses.

Certain types of property are distributed by means other than a Will. Examples of such property passing "outside" the Will include:

- real estate in which the title is held in joint tenancy;
- checking, brokerage, and other financial accounts held in joint tenancy;
- life insurance proceeds when a charity or person is named as a beneficiary; or
- property held in trust, including simple savings bank trusts and living trusts.
All your other assets—from your personal bank account to household items to real estate owned by you alone or as a tenant-in-common—pass according to the terms of your Will. In addition, you can leave valuable instructions in your Will regarding your funeral, burial or cremation, or regarding your selection of a guardian for your children.

WHAT HAPPENS IF YOU DO NOT MAKE A WILL?

If you die without a valid Will, your property passes according to a complex legal scheme to spouses, children, or blood or adopted relatives. Your lover or friend receives nothing, regardless of the length or importance of your relationship. Nor will any of your money or property go to your favorite charity, even if you told your friends and family that you wanted your money to help fund a particular non-profit service. Finally, if you die without a Will and no close relative can be found to inherit your property, it will pass to the State.

CAN YOUR WILL BE CHALLENGED?

You may be concerned that your family will try to set aside your Will. If you are 18 years old or older and have the mental capacity to make a Will, your Will should be recognized as valid. "Mental capacity" to make a Will is a legal standard that is impossible to define with certainty, but generally means that:
1) You are aware of the kind of property you own and where the property is located;

2) You are aware of the existence of your family members, spouse, or children and that they are the persons who would usually receive your assets (whether or not you finally decide to name them in your Will); and

3) You understand what property you want to give to whom.

If someone deprives you of your free will by unduly influencing you or misleading you in disposing of your property in a way you would not otherwise have done, all or part of your Will may be held invalid. One reason to execute a formal Will is the presence of witnesses who can later testify to your mental capacity and to the lack of undue influence.

You can avoid claims of "undue influence" or "lack of mental capacity" if you make your Will as soon as possible while you are reasonably healthy. Your health may rapidly change, and legal challenges to Wills are often made on the basis that the Willmaker was too weak to know what he or she was doing.
HELPING YOU MAKE YOUR WILL

If you are a person with serious HIV infection, contact the local AIDS legal service closest to you during business hours. The legal program will arrange for one of its volunteer attorneys to draft your simple Will or Durable Power of Attorney. No fees are generally charged for these basic legal services. If you are unable to make an office visit, an attorney will come to your home or hospital room.

To assist the attorney in her or his drafting of your Will, please answer the following questions before your meeting. If you do not understand a particular question, ask your attorney. He or she will answer any question you may have about your Will.

WILL INFORMATION

1) NAME: __________________________________________

2) ADDRESS: ______________________________________

3) HOME TELEPHONE: _____________________________

   WORK TELEPHONE: ______________________________

4) FAMILY SITUATION: If you have never been married and have never had children, check here _________ and proceed to item D. Otherwise, please provide:

   A. Name of current or former spouse(s):
      _____________________________________________

   B. Date and place of divorce or separation from spouse:
      _____________________________________________
C. Names and birth dates of all your children, whether or not they are still living:

D. Names of parents, whether or not they are still living:

E. Names of brothers and sisters, whether or not they are still living:

5) ALTERNATE FAMILY SITUATION: If you have a companion or lover, please state his or her name:

Do you have an agreement or contract with that person about the ownership or disposition of your property? If yes, please bring the agreement with you to the interview.

6) YOUR PROPERTY: Please list all your assets, including real estate, interest in a business or professional practice, bank accounts, stocks or bonds, cars, jewelry, clothing, artwork, furniture, etc. Please number each item.

7) PROPERTY DISPOSITION: You may leave all your property to one or more persons and/or charities, or leave particular pieces of property or specific amounts of money to specific people. In any case, please consider where your property should go if the person you intended to receive the item should die before you. Your "first choice" is called the intended beneficiary and your "second choice" is called the successor or contingent beneficiary.

Using the same numbering system you used in #6 above, please list your intended and successor beneficiaries for each item listed in #6. If you wish to leave all your property to one person or charity, please so state and also list the successor beneficiary.
8) **RESIDUARY BENEFICIARY:** This is a person or charity who receives any of your money or property not specifically distributed in your Will, which you forgot to include in your Will, or which you acquire after you have executed the Will. This person also receives gifts to others which fail because the named beneficiary or beneficiaries die before you. Please list your intended and successor residuary beneficiaries here:

9) **OTHER PROPERTY:** Please list:

A. All life insurance policies you hold and who is currently listed as the beneficiary:

B. Any retirement or similar benefits you have and who are the named beneficiaries:

C. Property, bank accounts, or other assets owned with another person:

10) **EXECUTOR:** This person will be responsible for paying your debts from your estate, for managing your property during the probate of your estate, and for distributing your property. You may name as executor any person over the age of 18 years who is a United States resident and legally competent. You may also name someone who is a beneficiary under your Will. Please list here the person or persons you wish to become Executor(s) of your
Will, along with alternate Executor(s) in case your first choice is unable or unwilling to serve:


11) FUNERAL INSTRUCTIONS: Please check your specific wishes:

______________ Burial, or ______________ Cremation

Funeral or memorial service?

______________ Yes ________________ No

Special instructions: ________________________________

__________________________

Do you want your Executor to publish an obituary?

______________ Yes ________________ No

Special instructions for obituary: ________________________________

__________________________

12) OTHER INFORMATION: Please note any other information useful in preparing your Will, or list any questions you have:

__________________________

__________________________

__________________________

__________________________

DATE _______________ SIGNATURE ___________________

G:\PB\RPR\RPR01N.W50
LIT4 09/18/90-1
Please bring this Will Information Booklet with you when you meet with your attorney to prepare your Will.

If you later decide to change your Will, you may either execute an entirely new Will or merely execute a "Codicil" which changes only part of your Will. Your local AIDS legal service is available to assist you in making changes to your original Will.

Your local SALSA organization can also help you to execute a Durable Power of Attorney for Health Care, other medical directives, and a financial power of attorney--all at no charge. In addition, your local AIDS legal service provides assistance on other legal matters to persons with HIV infection.